

REPORT
OF THE
Attorney General
OF THE
STATE OF FLORIDA

From January 1, 1911 to December 31, 1912

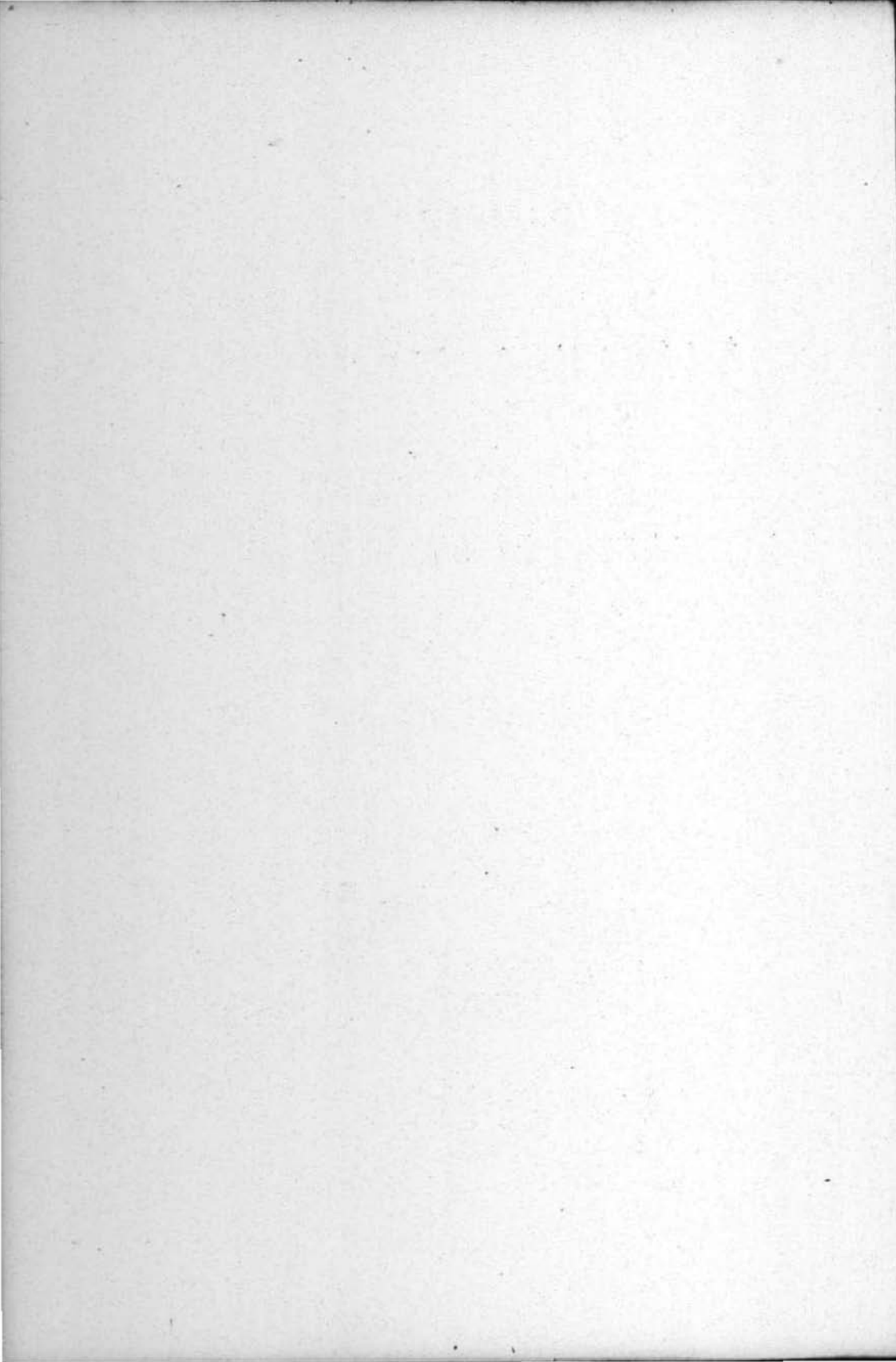
PARK TRAMMELL
Attorney General



TALLAHASSEE, FLORIDA

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REPORT OF ATTORNEY GENERAL.

STATE OF FLORIDA,
ATTORNEY GENERAL'S OFFICE,
Tallahassee, December 31, 1912.

Hon. Albert W. Gilchrist,
Governor of Florida.

SIR:—

In compliance with Sec. 27, Article IV Constitution of Florida and agreeable to the policy adopted by this department, I have the honor to submit herewith my report as Attorney General of the State, covering the period beginning January 1st, 1911, and ending December 31st, 1912.

GENERAL SCOPE OF DUTIES.

During the period of this report I have endeavored to perform such duties as were incumbent upon me as legal adviser to the administrative officers of the State, as the attorney for the State in all criminal cases before the Supreme Court, as the legal representative of the commonwealth in all civil litigation in all courts, as Supreme Court Reporter and in the various other matters incident to and connected with the legal department of the State.

SERVICE ON BOARDS.

In addition to the foregoing duties performed by me, I have, as required by law, served as a member of the following boards, to-wit: Board of Drainage Commissioners, the Trustees of the Internal Improvement Fund,

Board of Pardons, State Board of Education, Board of Insurance Commissioners, State Board of Assessors, Board of Commissioners of State Institutions and the State Canvassing Board. As these boards deal extensively with the problems of State and as the States business has increased proportionally with the times a considerable part of my time has necessarily been occupied in meeting the responsibilities upon me as a member of each of them.

ADVISOR OF BOARDS.

Nearly every board created by statute or by the constitution requires that the Attorney General shall not only be a member of such board, but shall be the legal advisor in all of its contracts and official acts. This advisory work has increased proportionately with the State matters.

OFFICIAL OPINIONS.

Within this period I have as legal adviser to the *administrative officers*, rendered approximately two hundred written opinions touching upon various legal questions and the administration of the affairs of State. Have also rendered many times that number of oral opinions when the officer seeking my views was pressed for time or did not regard a written opinion necessary. I shall not undertake to set out herein all of the written opinions prepared, but will incorporate elsewhere in this report a few only of the many touching upon those matters of general interest.

UNOFFICIAL OPINIONS.

Within the past two years I have received more than fifteen hundred requests asking for my opinion upon matters touching the duties of city, district and county

officers and for opinions upon other legal questions. Hundreds of requests for private advice have been received from persons over the State. While it is not, under the law, the duty of the Attorney General to give legal opinions to city, district and county officers nor private citizens, yet I have in the interest of an efficient and uniform administration of the laws of the State, and as a matter of courtesy to those making inquiry, promptly and as fully as time would permit, answered these inquiries giving my view upon the legal points in question.

INVESTMENT OF SCHOOL FUND.

During the year 1909 the State Board of Education adopted the policy of investing the State School Fund in County and Municipal bonds. This change from the old plan of investing this fund exclusively in State securities, has very materially added to the responsibilities and work of this office, as it is necessary for the Attorney General to pass upon the legality of each bond issue offered to the Board before a purchase is made or the bonds rejected, sometimes necessitating a research of every legal step taken to issue the bonds.

CIVIL CASES.

Under this heading elsewhere in this report will be found a list of the civil cases handled by this office during the biennial period, some of which have been terminated, while others are still pending. It will be noticed that the greater part of the civil litigation has arisen under the revenue laws of the State.

CRIMINAL CASES.

During the two years I have with the assistance of my Secretary prepared briefs and such other papers as were

necessary and represented the State before the Supreme Court in ninety-six criminal and habeas corpus cases. Of this number Sixty were affirmed; twenty-three reversed; three dismissed for failure of plaintiff in error to perfect the appeal, and there are twelve criminal cases now on my docket. I incorporate herein a table showing these cases. Two of the above cases were reversed only for proper sentence.

INDEXING OF LAWS AND JOURNALS.

As required by law this department following the adjournment of the last session of the Legislature indexed and side-noted the session laws which is the largest in the history of the State, also indexed the journals of the Senate and House of Representatives containing three thousand pages. Both my Secretary and Clerk devoted practically all of their time to this work for some three or four months before the laws and journals were properly indexed and were in print.

SUPREME COURT REPORTER.

The Attorney General is, under the provisions of our State Constitution made Reporter for the Supreme Court. The duties devolving upon me as such reporter require that I have edited all of the decisions of the Supreme Court. To do this requires that I have read in my office each and every decision of this court, and have those decisions made up into volumes and properly indexed. The head notes of each decision is digested for its proper heading. This work requires expert proof service, and the highest degree of accuracy, combined with a sufficient knowledge of the law to properly classify, index and digest the different subjects. My Secretary, who is an attorney at law, with judicial experience and my clerk who is an experienced printer and proof reader, execute

to a large extent this work. During the period covered by this report I have reported the decisions of the court two volumes each year, comprising the June term 1910, January term 1911, June term 1911, and January term 1912, comprising the 60th, 61st, 62nd and 63rd volumes of the Supreme Court Reports. Part of the 64th is now in the hands of the State Printer. The June term for 1912 does not end until January 13th, 1913, therefore this term cannot be reported in full until after that date.

EXPENSES OF DEPARTMENT.

The expense of this department is restricted to the salary of the Secretary and salary of the clerk, the incidental expenses of the department and the purchase of books and bookcases. I am including herein a statement of these items of expense.

With this review in a general way of the work of this department, I respectfully submit this report in entirety for the consideration of your excellency.

PARK TRAMMELL,
Attorney General.

APPROPRIATIONS AND EXPENDITURES.

Appropriations.

For first six months, 1911—

Secretary	\$ 900.00
Clerk	600.00
Incidental expenses	250.00
Books and bookcases	125.00

For the last six months, 1911—

Secretary	\$ 900.00
Clerk	600.00
Incidental expenses	300.00
Purchase of books	125.00

For the year 1912—

Secretary	\$1,800.00
Clerk	1,200.00
Incidental expenses	600.00
Purchase of books	250.00

Expenses.

Secretary for years 1911-12.....	\$3,600.00
Clerk for years 1911-12.....	2,400.00
Incidental expenses 1911-12.....	627.66
Books and bookcases 1911-12.....	374.45

INCIDENTAL EXPENSES.

Amount brought forward from the year

1910\$423.37

Amount appropriated six months, 1911.. 250.00

Amount appropriated last six months,

1911 300.00

Total\$973.37

Expended during year 1911, as per item-

ized statement 246.04

Balance in fund\$727.33

Balance forwarded Jan. 1, 1912.....\$727.33

Appropriation for year 1912..... 600.00

Expended during year 1912 as per item- ized statement	381.62
Total	<u>\$1,327.33—381.62</u>
Balance in Fund	<u>\$945.71</u>

BOOKS AND BOOK-CASE FUND.

Amount brought forward from 1910.....	\$219.40
Appropriation for first six month, 1911.....	125.00
Appropriation for last six months, 1911.....	125.00
Total	<u>\$469.40</u>
Expended during year 1911, as per itemized statement	\$ 89.90
Balance in Fund for Jan. 1, 1912.....	379.50
Appropriation for 1912.....	250.00
Total	<u>\$629.50</u>
Expended during year 1912, as per itemized statement	\$284.55
Balance in Fund Jan. 1, 1913.....	<u>\$344.95</u>

ITEMIZED STATEMENT.

Incidental Expenses of Attorney General 1911 and 1912.

1911

January —Trip to Pensacola and return in case of Dewherst v. Board of Control....	\$ 26.10
Western Union, messages	3.09
John McDougal, postmaster, stamps.	6.02
February —John McDougal, stamped envelops...	32.28
T. J. Appleyard, paper	3.00
Southern Express Co., express	5.50

1911.

March	—J. F. Hill, stationery	1.10
	T. J. Appleyard, stationery	3.55
	John McDougal, stamps	6.00
	Western Union, messages	.50
	Western Union, messages	1.41
April	—John McDougal, stamps	3.12
	Western Union, messages	1.01
May	—John McDougal, stamps	10.00
June	—John McDougal, stamped envelopes..	6.50
	Trip to Pensacola inspecting L. & N. Railway for assessment by Board..	22.85
	Trip to Jacksonville and Tampa with view of making assessment of railroad properties	28.14
July	—John McDougal, postmaster, stamps.	2.50
	John McDougal, 1000 stamped en- velopes	21.26
August	—H. & W. B. Drew Co., Hotchkiss staples	2.03
September	—John McDougal, stamps and box rent.	3.87
	Fox Typewriter Co., three ribbons...	2.25
	F. M. Brumby, 2 Yale keys.....	1.00
	Western Union, messages	2.21
October	—Western Union, telegrams	3.58
	D. R. Cox, 1 yd. linoleum	.75
	E. W. Clark, bands and clips.....	.75
	Jno. McDougal, stamps for mailing text book contracts	6.05
	T. J. Appleyard, typewriter paper ..	5.30
	Trip to Jacksonville to confer with Gov. Jennings as to title to public square for Supreme Court build- ing	14.45

1911.

November	—T. J. Appleyard, second sheets . . .	2.60
	J. F. Hill, stationery	3.45
	John McDougal, stamps	3.77
	H. R. Kaufman, repairs	3.75
December	—J. F. Hill, stationery	1.75
	Western Union, telegrams	3.50
	F. W. Marsh, clerk court	1.05
Total for 1911		\$246.04

1912

January	—John McDaugal, stamps, envelopes..	28.99
	Western Union, telegrams	1.51
February	—T. J. Appleyard, paper.....	5.25
	John McDougal, stamps.....	3.02
	J. F. Hill, stationery	4.40
	Western Union, telegrams	1.13
	J. W. Corbett, typewriter ribbon . . .	2.25
	First trip to Quincy in suit of Gads-	
	den County Bonds	3.55
	Second trip to Quincy in same matter	3.55
March	—Valdosta Typewriter Exchange, re-	
	pairs	12.00
	E. W. Clark, stationery	.85
	Western Union, messages	6.58
	Trip to Jacksonville in suit of King	
	Lumber Co. v. Board of Control ..	12.85
April	—John McDougal, postmaster, stamps.	6.81
	J. F. Hill, stationery	4.00
	E. W. Clark, pencils	.50
May	—John McDougal, postmaster, stamps.	3.02
	T. J. Appleyard, legal cap paper	6.00
	Southern Express Co.	1.30

1912.

June	—J. F. Hill, stationery	2.80
	Alex McDougal, postmaster, stamps.	3.00
	T. J. Appleyard, cards for reports...	1.50
	J. W. Corbett, typewriter ribbon....	.75
	Trip to Jacksonville in re quo war- ranto against Bell Telephone Co...	10.90
July	—Alex McDougal, postmaster, stamps.	5.77
	Western Union, messages	3.79
	J. F. Hill, stationery	1.60
	Western Union, messages for May..	1.40
	T. J. Appleyard, envelopes	.65
	F. W. Marsh, Pullman case	.75
	Express on stationery	1.30
August	—Alex McDougal, 3000 stamped en- velopes	63.72
	J. F. Hill, stationery	2.50
	Western Union, messages	2.72
	M. L. Glenn, exchange on Royal Type- writer	50.00
	Geo. D. Barnard, law docket, paper and express	20.85
September	—Alex McDougal, stamps	6.02
	Western Union, messages	.66
	E. W. Clerk, 2 file cases	.50
October	—Alex McDougal, box rent.....	.78
	J. W. Corbett, chair seat	.50
November	—Alex McDougal, stamps, etc.	3.04
	J. F. Hill, typewriter ribbons	3.00
	M. L. Green, typewriter ribbons	1.50
	Western Union, messages	5.91

December—Western Union, messages	1.20
E. W. Clark, stationery	2.25
Alex McDougal, stamps	7.02
Expenses of trip to Washington, D. C., in case of <i>Wailes v. A. C.</i> Croom, Comptroller	67.68
Total for 1912	<u>\$381.62</u>

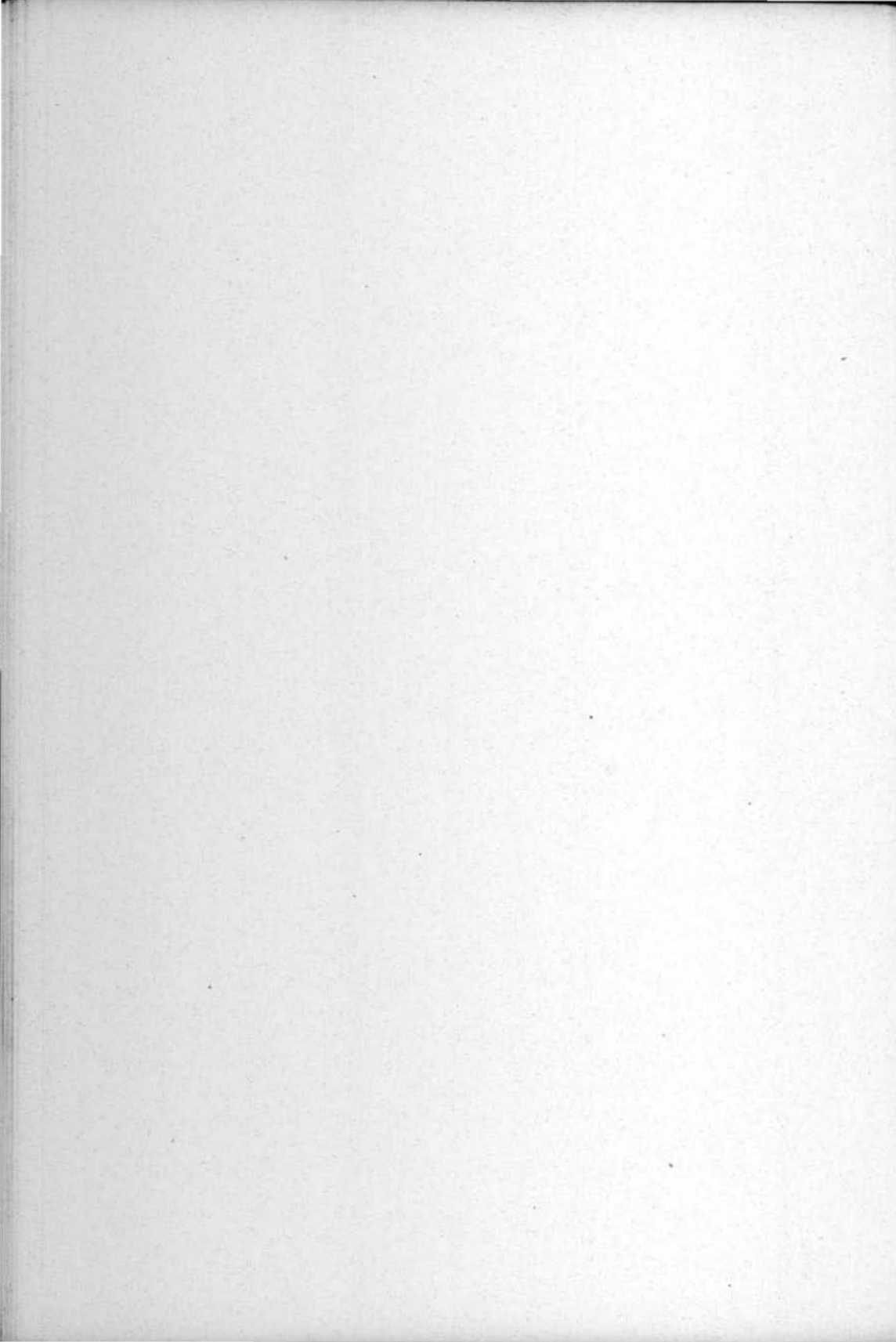
Itemized Statement of Book and Bookcase Fund.

1911

Julius Drew, annotated table of Statutes.....	\$ 4.00
Gilmore & Davis, book shelf	2.00
Banks Law Pub. Co., Dewhersts Rules Federal Practice	5.50
T. J. Appleyard, binding briefs	2.50
H. & W. B. Drew Co., Constitution of Florida Index	1.10
J. B. Lyon & Co., Postal Guide	3.50
West Pub. Co., advance sheet	5.00
D. R. Cox Furniture Co., bookcases	48.30
American Law Book Co., books	18.00
Total for 1911	<u>\$ 89.90</u>

1912.

T. J. Appleyard, binding 18 Fla. Rep.	\$ 27.00
Wharton's Criminal Evidence (2 Vols.)	15.00
Geo. D. Barnard & Co., labels.....	7.70
West Publishing Co., advance sheet	5.00
West Publishing Co., Southern Reporter	193.00
D. R. Cox Furniture Co., bookcases	17.25
American Law Book Co., books	19.60
Total for 1912	<u>\$284.55</u>



CIVIL CASES.

*Circuit Court of the Fourth Judicial Circuit of Florida,
in and for St. Johns County.*

*Mary Dewhurst, Complainant,
Vs.*

*The Board of Control and the State
Board of Education et al.*

This is a suit instituted in July, 1910, wherein the complainant seeks to recover the possession of a certain lot within the enclosure of the Deaf and Dumb Institute at St. Augustine. The complainant alleging that said lot belongs to her, while the State denies her rights in said lot. The suit is now pending, the issues not having yet been finally tried.

*Circuit Court of the Fourth Judicial Circuit of Florida,
in and for Clay County.*

*O. A. Buddington, Complainant,
Vs.*

*E. N. Holt, Tax Collector of Clay
County, and A. C. Croom, Comptroller of the State of Florida, Defendant.*

This was a suit instituted by O. A. Buddington against E. N. Holt, Tax Collector, and A. C. Croom, Comptroller, seeking an injunction to restrain the collection of a license tax on a certain water plant and mains owned by the said Buddington in the town of Green Cove Springs,

Fla. The Attorney General and Mr. George W. Geiger, attorney for the county, prepared and interposed a demurrer to the complainant's bill of complaint, and upon a hearing of the demurrer the same was sustained. No further action has been taken by complainant.

In the Circuit Court of the United States for the Northern District of Florida. In Chancery.

*The George E. Wood Lumber Co., a
Corporation, Complainant,
Vs.*

*J. W. Johnson, Tax Collector, Holmes
County, Florida.*

This was a suit instituted by the George E. Wood Lumber Company against J. W. Johnson, Tax Collector of Holmes County, seeking an injunction against the collection of taxes upon approximately 175,000 acres of land upon the ground of alleged discrimination. A demurrer to complainant's bill was prepared and interposed by the Attorney General and Mr. D. J. Jones, attorney for the county. Upon a hearing before Judge Shepard, at Pensacola, defendant's demurrer was sustained. No further action has been taken by complainant.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

<i>The State of Florida, Plaintiff,</i>		
<i>Vs.</i>		
<i>Southern Mutual Aid Association, a</i>		<i>Assumpsit Dam</i>
<i>Corporation, Defendant.</i>		<i>ages, \$2,000.00.</i>

This is a case in which the Attorney General brought

an action at law to compel the Southern Mutual Aid Association, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was in February, 1910, tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court. The Supreme Court sustained the lower court, therefore the State was successful in its contentions.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

<i>The State of Florida, Plaintiff,</i> <i>Vs.</i> <i>Peninsular Industrial Insurance Com-</i> <i>pany, a Corporation, Defendant.</i>	<i>Assumpsit Dam-</i> <i>ages, \$3,000.00.</i>
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This is a case in which the Attorney General brought an action at law to compel the Peninsular Industrial Insurance Company, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court. This court also sustained the State.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

The State of Florida, Plaintiff,

Vs.

*Afro-American Industrial and Benefit
Association, a Corporation, Defendant.*

This is a case in which the Attorney General brought an action at law to compel the Afro-American Industrial and Benefit Association, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court. This court also sustained the State.

THE FOLLOWING CASES WERE PENDING IN THE
COURTS AT THE TIME OF MY ASSUMING
THE DUTIES OF ATTORNEY GENERAL.

*Circuit Court of the Third Judicial Circuit, in and for
Suwannee County.*

*Florida Railway Company, a Corporation,
Complainant,*

Vs.

A. C. Croom, Comptroller, et al.

This was a suit instituted by the Florida Railway Company on the 13th of November, 1906, to enjoin the sale of

its property by the defendants for taxes assessed against it for the year 1905. The Comptroller, with the assistance of the State Treasurer and Attorney General, assessed the said railroad and its property for taxes. The railroad company did not pay its taxes as assessed within the time provided by law for the payment of taxes. The Comptroller thereupon issued his warrant to the Sheriff of Suwannee County to levy upon and make sale of the Florida Railway and its property in accordance with law to satisfy the unpaid taxes for the year 1905. Thereupon, prior to the date fixed for sale by the Sheriff, the railroad company filed its bill for injunction to restrain the sale of its railroad and property. A temporary injunction was issued.

This case was settled on the 1st day of July, 1910, and the taxes paid upon a valuation agreeable to the assessing officers.

Four other similar suits were instituted to enjoin the collection of the taxes due by said railroad for 1906, 1907, 1908 and 1909. All of said suits were settled upon the same terms as the foregoing suit. The total amount of taxes collected in the settlement was about twenty thousand dollars.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

Rachel C. M. Gaillard and Henry Gaillard, her husband, Complainants,

Vs.

George Lewis, as Executor, et al., Defendants.

This suit was instituted by Rachel C. M. Gaillard and Henry Gaillard, her husband, claiming as heirs of J. D. Westcott, against George Lewis, as executor of the will

of Judge J. W. Westcott, the State Board of Education and the State Board of Control, seeking to have declared, after the passage of Chapter 5384, Laws of Florida, Acts of 1905, commonly known as the "Buckman bill," terminated the trust estate created under Judge Westcott's will for the benefit of the West Florida Seminary and to have decreed that such estate reverted to the heirs of Judge Westcott.

The defendants interposed a demurrer to the bill of complaint. Upon hearing of the demurrer it was overruled, and the defendants took an appeal to the Supreme Court. The Supreme Court has rendered its decision sustaining the State and reversing Judge Malone.

SUITS AGAINST THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*Florida East Coast Railway Company,
Complainant,
Vs.*

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to convey to said complainant 2,040,000 acres of land, claiming the said land under a legislative land grant act. This suit is now pending, the issues not having yet been tried. This suit has been settled and dismissed.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*Tallahassee Southeastern Railroad Co.,
Complainant,*

Vs.

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to convey to said complainant 400,000 acres of land, claiming the said land under a legislative land grant act. This suit is now pending, the issues not having yet been tried.

*In the Circuit Court of the United States for the North-
ern District of Florida.*

Richard G. Peters, Complainant,

Vs.

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to either convey to him 400,000 acres of land or the sales price of the land, amounting to \$251,000. A demurrer was interposed to complainant's bill, and was sustained. The complainant took an appeal to the Circuit Court of appeals at New Orleans. Upon the suggestion of Judge Bisbee, one of the attorneys for appellant, that he doubted the Court of Appeals having jurisdiction, the appeal was dismissed from this court for want of jurisdiction. Appeal was then taken to the Supreme Court of the United States by the said Richard G. Peters. The U. S. Supreme Court sustained the State.

*Circuit Court of the Seventh Judicial Circuit of Florida,
in and for Dade County.*

Charles H. Root, Complainant,

Vs.

*James Gardner and the Trustees of the
Internal Improvement Fund, De-
fendants.*

This is a suit instituted by complainant to compel the Trustees of the Internal Improvement Fund to convey certain lands under a claim founded on the homestead statutes of this State. The case is now pending upon bill and answer, testimony not yet having been taken.

*In the Circuit Court of the United States for the North-
ern District of Florida.*

*W. B. Cutting and R. F. Cutting,
Complainants,*

Vs.

*Albert W. Gilchrist et al., as Trustees
of the Internal Improvement Fund
of the State of Florida, Defendants.*

This is a suit instituted August 5th, 1910, by the complainants against the Trustees of the Internal Improvement Fund, in which they seek to recover from the Trustees the sum of \$79,000 in payment of alleged bonds issued by the Florida Railroad Company under the Internal Improvement Act of 1855. The suit is now pending, the issues not having yet been tried.

*In the Circuit Court of the United States for the North-
ern District of Florida.*

Sidney I. Wailes, Complainant,

Vs.

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, wherein he seeks to recover from the Trustees approximately \$80,000 alleged to be due him for services alleged to have been rendered by him in connection with the procurement of the patent from the Federal Government to the Everglades lands, under a contract alleged to have been made with him by the Trustees on April 13th, 1878. This suit is now pending, the issues not having yet been tried.

In the Circuit Court of Leon County, Florida.

Sidney I. Wailes,

Vs.

A. C. Croom, Comptroller.

This was a suit instituted by Sidney I. Wailes, against A. C. Croom, Comptroller. The complainant asked for a mandamus to compel the Comptroller to audit and pay the alleged claim of Wailes for services alleged to have been rendered in the collection of the Indian War Claim. Judge Malone refused to grant a mandamus. Wailes then appealed to the State Supreme Court. This court sustained Judge Malone. Wailes then appealed to the U. S. Supreme Court, that court dismissed the appeal upon the motion of the State, upon the ground that the suit abated upon the death of Comptroller Croom.

In the Circuit Court of Leon County, Florida.

*Albert W. Gilchrist, as Governor and
Citizen,
Vs.*

H. Clay Crawford, as Secretary of State.

This suit was instituted to enjoin the Secretary of State from taking the necessary steps to submit for consideration of the voters in the November election of 1912, the proposed Initiative and Referendum Constitutional Amendment. The Secretary of State under the advise of the Attorney General was publishing the said proposed amendment and it was to have been voted upon. Upon the hearing before Judge Malone of the application of Governor Gilchrist for an injunction the court granted a temporary injunction. The Attorney General then upon behalf of the Secretary of State, petitioned the Supreme Court to make an order suspending the temporary injunction granted by Judge Malone. This petition was denied by a divided court, three against granting the order and two favorable to granting it. This action defeated the submission of the said proposed amendment.

*In the U. S. Circuit Court for the Northern District of
Florida.*

*The Pullman Co.,
Vs.
A. C. Croom, Comptroller.*

This suit was instituted by the Pullman Co., seeking to enjoin the Comptroller from assessing and collecting the tax of \$1.50 per hundred on the gross receipts of the Florida earnings of The Pullman Company. The lower

court denied the injunction. The tax was then paid but the company appealed to the U. S. Supreme Court. The case is now pending in that court.

A second suit for the tax of 1911 was instituted and has taken the same course and is now in the U. S. Supreme Court.

CRIMINAL CASES

DISPOSED OF DURING 1911 AND 1912.

Joseph H. Bell vs. State of Florida, January term 1911; convicted of assault with intent to rape in the Circuit Court for St. Lucie County; disposition reversed; reported in 61 Fla. 6.

John Beville vs. State of Florida, January term 1911; convicted of murder in the third degree in the Circuit Court for Holmes County; disposition affirmed; reported in 61 Fla. 8.

Noah C. Coatney vs. State of Florida, January term, 1911; convicted of murder in the second degree in the Circuit Court for Holmes County; disposition affirmed; reported in 61 Fla. 19.

George Gee vs. State of Florida, January term 1911; convicted of manslaughter in the Criminal Court of Record for Duval County; disposition affirmed; reported in 61 Fla. 22.

Wilkerson Gilbert, Percy Gilbert and Chester Gilbert vs. State of Florida, January term 1911; convicted of manslaughter in the Circuit Court for Jackson County; disposition affirmed; reported in 61 Fla. 25.

J. L. Goff vs. J. H. Rickerson, Sheriff, January term 1911; the plaintiff in error was convicted of a felony in the Criminal Court of Record for Suwannee County, Florida, and the judgment was affirmed, 60 Fla. 13, 53 South. Rep. 327. Subsequently, he instituted habeas corpus proceedings in the Circuit Court for Suwannee County to test the validity of Chapter 5771, Acts of 1907. The validity of the act was sustained in Rushton vs. State, 58 Fla. 94, 50 South Rep. 486; disposition, judgment remanding the petitioner affirmed; reported in 61 Fla. 29.

D. S. Carlton as Sheriff vs. Peter Johnson, Frank Wallrous, N. M. Sykes and W. W. Sykes, January term 1911; convicted of unlawfully using a seine in the waters on the coast of the State of Florida in the Circuit Court for St. Lucie County; disposition reversed; reported in 61 Fla. 15.

Jake Hughes vs. State of Florida, January term 1911; convicted of selling liquors in "dry" county in the Circuit Court for Citrus County; disposition affirmed; reported in 61 Fla. 32.

William McNair vs. State of Florida, January term 1911; convicted of entering dwelling house with intent to steal in the Criminal Court of Record for Duval County; disposition reversed; reported in 61 Fla. 35.

Curley Purcell vs. State of Florida, January term 1911; convicted of selling liquors in "dry" county in the Circuit Court for Leon County; disposition affirmed; reported in 61 Fla. 43.

Robert Pollard vs. State of Florida, January term 1911; convicted of embezzlement in the Criminal Court of Record for Escambia County; disposition reversed; reported in 61 Fla. 44.

G. D. Pressley vs. State of Florida, January term 1911; convicted of breaking and entering in the Criminal Court of Record for Walton County; disposition reversed; reported in 61 Fla. 46.

Trixie Russell vs. State of Florida, January term 1911; convicted of manslaughter in the Circuit Court for Duval County; disposition reversed; reported in 61 Fla. 50.

J. B. Sallas vs. State of Florida, January term 1911; convicted of manslaughter in the Criminal Court of Record for Walton County; disposition affirmed; reported in 61 Fla. 59.

State of Florida vs. Hugh C. Bethea, January term 1911; indicted and arrested on a capias for violation of Chapter 5929, Acts of 1909, on habeas corpus proceedings was discharged, a writ of error was allowed and taken by the State under Section 2257 of the General Statutes; disposition reversed; reported in 61 Fla. 60.

Robert Walsingham vs. State of Florida, January term 1911; convicted of murder in the second degree in the Circuit Court for Washington County; disposition reversed; reported in 61 Fla. 67.

Will Walker, alias Sonnie Walker, vs. State of Florida, January term 1911; convicted of murder in the first degree in the Circuit Court for Duval County; disposition affirmed; reported in 61 Fla. 78.

Dennard Webb vs. State of Florida, January term 1911; convicted of manslaughter in the Circuit Court for Madison County; disposition affirmed; reported in 61 Fla. 82.

Eddie Andrew vs. State of Florida, June term 1911; convicted of murder in the first degree with mercy in the Circuit Court for Wakulla County; disposition affirmed; reported in the 62 Fla. 10.

William G. Ayers vs. State of Florida, June term 1911; convicted of murder in the second degree with mercy; disposition affirmed; reported in 62 Fla. 14.

Joe Caldwell, Eugene Faircloth and Harvey Hattaway vs. State of Florida, June term 1911; convicted of aiding, encouraging, counseling and abetting one Ted McDaniel in unlawfully entering without breaking a storehouse with intent to commit a misdemeanor, in the Criminal Court of Record for Walton County; disposition affirmed; reported in the 62 Fla. 18.

Thos. G. Cannon and Simeon S. Driggers vs. State of Florida, June term 1911; Cannon convicted of murder in the second degree and Driggers of manslaughter in the Circuit Court for Polk County; disposition affirmed; reported in the 62 Fla. 29.

John Colvin vs. State of Florida, June term 1911; convicted of fraudulently altering the marks of a hog in the Criminal Court of Record for Walton County; disposition affirmed; reported in 62 Fla. 27.

Harry Danson vs. State of Florida, June term 1911; convicted of murder in the second degree in the Circuit Court for Duval County; disposition affirmed; reported in the 62 Fla. 29.

J. B. Edwards vs. State of Florida, June term 1911; convicted of usury in the Court of Record for Escambia County; disposition affirmed; reported in the 62 Fla. 40.

Joe Fleming vs. State of Florida, June term 1911; convicted of larceny in the Criminal Court of Record for Duval County; disposition affirmed; reported in 62 Fla. 48.

George Floyd vs. J. M. Bell, Sheriff, June term 1911; in habeas corpus proceedings before the Circuit Judge, Floyd was remanded to the custody to the Sheriff of Walton County upon an information charging that Floyd having been lawfully summoned to work the public road in said county, did fail and refuse to work said road; case came to Supreme Court on writ of error; disposition order remanding petitioner affirmed; reported in 62 Fla. 50.

William Foster vs. State of Florida, June term 1911; convicted of grand larceny in the Criminal Court of Record for Duval County; disposition affirmed; reported in 62 Fla. 52.

Charleston Francis vs. State of Florida, June term 1911; convicted of murder in the second degree in the Circuit Court for Gadsden County; disposition reversed; reported in 62 Fla. 54.

Mary Hicks vs. State of Florida, June term 1911; convicted of murder in the second degree in the Circuit Court for Hernando County; disposition affirmed; reported in 62 Fla. 62.

H. F. Hinson vs. State of Florida, June term 1911; convicted of larceny of a bracelet of the value of \$5,000, and for receiving, buying and aiding in the concealment of same in the Criminal Court of Record for Duval County; disposition affirmed; reported in 62 Fla. 63.

H. H. Lewis, Sheriff, vs. Nero Nelson, June term 1911; Nelson procured a writ of habeas corpus from the Judge of the Ninth Judicial Circuit upon allegation that he was unlawfully detained by the Sheriff of Jackson County by virtue of a warrant issued by the Justice of the Peace charging the petitioner with "feloniously devising and intending to injure and defraud the Geneva Lumber Company * * did by false promise to perform labor for said corporation * * obtain fifteen dollars by falsely promising to begin work * * which said promises were wholly false and untrue;" case was brought to the Supreme Court upon writ of error; disposition, judgment of the Circuit Court discharging the defendant from custody affirmed; reported in 62 Fla. 71.

Julius McRae vs. State of Florida, June term 1911; convicted of murder in the first degree with mercy in the Circuit Court for Gadsden County; disposition affirmed; reported in 62 Fla. 74.

F. M. Phillips vs. State of Florida, June term 1911; convicted of assault with intent to murder in the Criminal Court of Record for Walton County; disposition affirmed; reported in 62 Fla. 77.

Cannon Porter vs. State of Florida, June term 1911; Porter was convicted in the court of a Justice of the Peace in Jackson County upon a charge of larceny of two hogs; a writ of habeas corpus was applied for. The order of the Circuit Court in the habeas corpus proceedings was that the writ be dismissed and the defendant ordered held by the Sheriff; a writ of error was allowed by the Circuit Judge under the Statute; Supreme Court held that the sentence of the Justice of the Peace void for apparent want of jurisdiction and ordered the petitioner taken by the Sheriff before the proper tribunal for appropriate action under the law; reported in 62 Fla. 79.

A. J. Revels vs. State of Florida, June term 1911; convicted of uttering a forged instrument in the Criminal Court of Record for Suwannee County; disposition affirmed reported in 62 Fla. 83.

J. J. Shuman vs. State of Florida, June term 1911; convicted of concealing mortgaged property in the Circuit Court for Jefferson County; disposition reversed; reported in 62 Fla. 84.

Mack Smith vs. State of Florida, June term 1911; convicted of selling liquor in "dry" county in the Circuit Court of Manatee County; disposition affirmed; reported in 62 Fla. 91.

Frank Sumpter vs. State of Florida, June term 1911; convicted of murder in the second degree in the Circuit Court for Columbia County; disposition reversed; reported in 62 Fla. 98.

E. E. Woodson vs. State of Florida, June term 1911; convicted of living in open state of adultery in the Criminal Court of Record for Dade County; disposition reversed; reported in 62 Fla. 106.

Bascom Carlton, Dan Carlton and Marion Carlton vs. State of Florida, January term 1912; Bascom Carlton convicted of murder in the first degree with Mercy; Marion and Dan Carlton convicted of murder in the second degree, in the Circuit Court for St. Johns County; disposition, judgment of lower court affirmed as to all the defendants; reported in 63 Fla. 1.

P. C. Cox vs. State of Florida, January term 1912; convicted of accessory after the fact of murder in the Circuit Court for Dade County; disposition reversed; reported in 63 Fla. 12.

Anderson Davis vs. State of Florida, January term 1912; convicted of the larceny of a cow in the Criminal Court of Record for Walton County; disposition reversed; reported in 63 Fla. 15.

Elizabeth Johnson vs. State of Florida, January term 1912; convicted of murder in the first degree with mercy; disposition reversed; reported in 63 Fla. 16.

Sam Mathis and Obe Mathis vs. State of Florida, January term 1912; convicted of murder in the first degree in the Circuit Court for Jackson County; disposition affirmed; reported in 63 Fla. 21.

Starke Mathis vs. State of Florida, January term 1912; convicted of assault upon a female child under the age of ten years in the Circuit Court for Jackson County; disposition affirmed; reported in 63 Fla. 23.

Abe Middleton vs. State of Florida, January term 1912; convicted of murder in the first degree in the Circuit Court for Clay County; disposition affirmed; reported in 63 Fla. 24.

R. J. Owens vs. State of Florida, January term 1912; convicted of usury in the Court of Record for Escambia County; disposition affirmed; reported in the 63 Fla. 26.

Tom Powell vs. State of Florida, January term 1912; convicted of larceny in the Criminal Court of Record for Duval County; disposition affirmed; reported in 63 Fla. 34.

G. D. Presley vs. State of Florida, January term 1912; convicted of breaking and entering with intent of committing the felony of larceny in the Criminal Court for Walton County; disposition affirmed; reported in the 63 Fla. 37.

W. Henry vs. State of Florida, January term 1912; convicted of altering the marks of three head of cattle in the Circuit Court of Osceola County; disposition reversed; reported in 63 Fla. 40.

J. M. Stinson vs. State of Florida, January term 1912; Stinson was arrested upon a warrant issued by the County Judge of St. Lucie County charging him with taking fish with a haul seine in the waters of St. Lucie County. On habeas corpus proceedings before the Circuit Judge the accused was remanded to the custody of the Sheriff; case was brought to Supreme Court upon writ of error; disposition affirmed; reported in 63 Fla. 42.

Josephine Townsend vs. State of Florida, January term 1912; convicted of embezzlement in the Criminal Court of Record for Walton County; disposition reversed; reported in 63 Fla. 46.

James V. White vs. State of Florida, January term 1912; brought to Supreme Court for the second time upon charge of murder in the second degree, tried second time in the Circuit Court for Jackson County; disposition affirmed; reported in 63 Fla. 49.

James E. Whitney vs. State of Florida, January term 1912; convicted of drawing check on bank without funds on deposit to pay same, in the Circuit Court for Duval County; disposition reversed; reported in 63 Fla. 53.

Oliver Young, alias Marvel Young, January term 1912; convicted of manslaughter in the Circuit Court for Leon County; disposition affirmed; reported in the 63 Fla. 55.

CRIMINAL CASES DISPOSED OF AND WILL BE
REPORTED IN THE SIXTY-FOURTH FLOR-
IDA, JUNE TERM 1912.

Charles L. Scott vs. State of Florida, June term 1912; offense, murder in the first degree; appealed from the Circuit Court for Brevard County; disposition reversed.

George and Billie Best vs. State of Florida; offense manslaughter; appealed from the Circuit Court for Calhoun County; disposition affirmed as to George and reversed as to Billie Best.

E. J. D. Sutton vs. State of Florida; offense, shooting into an occupied house; appealed from the Circuit Court for Calhoun County; disposition, case affirmed.

Ben P. Jones vs. State of Florida; offense, larceny of a cow; appealed from the Circuit Court for Jackson County; disposition reversed for proper sentence.

Dan Mayo vs. State of Florida; offense, murder; appealed from the Circuit Court for Jackson County; disposition affirmed on a conviction of manslaughter.

Jake J. Peeler vs. State of Florida; offense, violation of local option law; appealed from the Circuit Court for Jackson County; disposition, judgment affirmed.

Noah W. Padgett vs. State of Florida; offense, murder; appealed from the Circuit Court for Taylor County; disposition, judgment affirmed.

Gadi L. Nichols vs. State of Florida; offense, murder; appealed from the Circuit Court for Jackson County; disposition, judgment reversed.

T. J. Thorpe et al. vs. State of Florida; offense, unlawful fishing; appealed from order dismissing writ of habeas corpus in the Circuit Court for Volusia County; disposition, order of Circuit Court affirmed.

Eliot Tucker vs. State of Florida; offense, larceny of cattle; appealed from the Circuit Court for Pasco County; disposition, judgment reversed.

I. L. Whiddon vs. State of Florida; offense, murder; appealed from the Circuit Court of Washington County; disposition, judgment reversed.

Jose Furentes vs. State of Florida; offense, murder; appealed from the Circuit Court for Pinellas County from a conviction of manslaughter; disposition, judgment affirmed.

Thos. R. Smothers vs. State of Florida; offense, murder; appealed from the Circuit Court for Franklin County from a conviction of manslaughter; disposition, judgment affirmed.

Will Lassiter vs. State of Florida; offense, assault with intent to commit manslaughter; appealed from the Criminal Court of Record for Walton County from a conviction as charged; disposition,, judgment reversed.

W. C. Roberson vs. State of Florida; offense, manslaughter in producing an abortion resulting in death; appealed from the Circuit Court for Polk County from a conviction as charged; disposition, judgment affirmed.

L. B. Owens vs. State of Florida; offense, murder; appealed from the Circuit Court for Escambia County; disposition, the judgment affirmed.

Gus Revels vs. State of Florida; offense, murder; appealed from the Circuit Court for Suwannee County; disposition, judgment affirmed.

Walter Johnson vs. State of Florida; offense, murder; appealed from the Circuit Court for Santa Rosa County; disposition, judgment affirmed.

Ab Penton vs. State of Florida; offense, murder; appealed from a conviction of manslaughter from the Circuit Court for Santa Rosa County; disposition, judgment affirmed.

William Cloud and Mary Fee vs. State of Florida; offense adultery; appealed from the Criminal Court of Walton County; disposition, judgment reversed.

CRIMINAL CASES DISMISSED ON MOTION OF THE
ATTORNEY GENERAL.

During the January Term, 1911:

State of Florida vs. Hugh C. Bethea; writ of error to the
Circuit Court for DeSoto County.

During the June Term 1912:

John Allen vs. State of Florida; writ of error to the
Circuit Court for Dade County.

Robert Lipscomb vs. State of Florida; writ of error
to the Circuit Court for Brevard County.

During the January Term, 1912:

W. P. Rhodes vs. State of Florida; writ of error to
the Criminal Court of Record of Duval County.

Mack Byrd vs. State of Florida, writ of error to the
Circuit Court for Gadsden County.

Charles Brown vs. State of Florida; writ of error to the
Court of Record for Escambia County.

J. F. Hazen vs. State of Florida; writ of error to the
Circuit Court for Bradford County.

J. B. Bray vs. State of Florida; writ of error to the
Circuit Court for Calhoun County.

Wm. Zeigler vs. State of Florida; writ of error to the
Circuit Court of Franklin County.

APPEALS THAT WERE NEVER PERFECTED.

Fred Thompson vs. State of Florida; writ of error to the Criminal Court of Dade County.

Henry Richards vs. State of Florida; writ of error to the Circuit Court for Volusia County.

Will Shuman vs. State of Florida; writ of error to the Circuit Court for Pasco County.

HABEAS CORPUS CASES DURING THE TERM OF THIS REPORT.

D. S. Carlton, Sheriff, vs. Peter Johnson, Frank Walrus, N. M. Sykes and W. W. Sykes; writ of error to the Circuit Court of St. Lucie County; reversed; reported in 61 Fla. 15.

State of Florida vs. Bethea; writ of error to the Circuit Court of DeSoto County; appeal taken by the State from a dismissal; reversed; reported in 61 Fla. 60.

George Floyd vs. J. M. Bell, Sheriff of Walton County; writ of error to the Circuit Court of Walton County; disposition, order remanding petitioner affirmed; reported in 62 Fla. 50.

H. H. Lewis, Sheriff of Jackson County, vs. Nero Nelson; writ of error to the Circuit Court for Jackson County; appeal taken from an order dismissing defendant; disposition affirmed; reported in 62 Fla. 71.

J. M. Stinson vs. State; writ of error to the Circuit Court of St. Lucie County; appeal from an order remanding prisoner; order affirmed; reported in 63 Fla. 42.

Cannon Porter vs. State, H. H. Lewis, Sheriff; writ of error to the Circuit Court for Jackson County taken to an order remanding defendant to jail; disposition, affirmed; reported in 62 Fla. 79.

CRIMINAL CASES PENDING DECEMBER
31st, 1912.

Clarence Hunter vs. State of Florida.

Charles R. Ammons vs. State of Florida.

Willis Bennett vs. State of Florida.

Pitchford and Clark vs. State of Florida.

Collin Smith vs. State of Florida.

Vann and Hagen vs. State of Florida.

Harry Bonaparte vs. State of Florida.

Lee Collins vs. State of Florida.

Joe Gillyard vs. State of Florida.

J. K. Stokes vs. State of Florida.

S. J. Sligh vs. State of Florida.

C. P. Cochran vs. State of Florida.

**OFFICIAL OPINIONS—ATTORNEY GENERAL
DURING TERM OF THIS REPORT.**

FOR THE YEARS 1911 AND 1912.

INTEREST ON COUNTY FUNDS.

Tallahassee, Fla., April 8th, 1911.

*Hon. Albert W. Gilchrist,
Governor, State of Florida.*

Dear Sir:—

Replying to your letter of the 3rd inst. wherein you ask me to advise you if there is any law requiring the Treasurer of a County to deposit interest on account of deposits to the credit of the funds of the County, I beg to advise that we have no statute upon this subject, but that it is my opinion that any interest paid upon County funds belongs to the County and that said interest should be paid into the County funds.

Yours very truly,

**POLLUTION AND OBSTRUCTION OF STREAMS BY
PHOSPHATE PLANTS.**

Tallahassee, Fla., April 11, 1911.

*Hon. Albert W. Gilchrist,
Governor, State of Florida,
Tallahassee, Florida.*

Dear Sir:—

In the matter of the complaint made to you through the Board of County Commissioners of Hillsborough County, against certain phosphate plants, upon an alleged

obstruction of the Alafia River by such phosphate plants in their operation by depositing the screenings from said plants into said river and its head waters, I beg to advise that in my opinion, if the facts alleged in this petition to you, and the documents accompanying the same can be established to the satisfaction of the court, that the State could procure an injunction enjoining such plants from the use of said river and its head waters, in such manner as to injure the public health or to injure the river for navigation. If after a further investigation into this matter it is deemed advisable for steps to be taken by injunction on the part of the State, such proceedings would, in my opinion, under the law have to be brought in the Circuit Court. I have no funds with which to defray the expense of such litigation, and there is no appropriation from which the funds can be provided, except from your contingent fund. It is my opinion that the complaint should be investigated, and, if after the investigation it is deemed for the public good, I shall in compliance with my duty under the law institute proceedings necessary, if I am provided with funds. It is my intention to go, within the next day or two, to confer with Mr. Wall, Attorney for the Board of County Commissioners, and others in regard to this complaint.

Respectfully submitted,

COUNTY SUPERINTENDENT OF SCHOOLS; PAY-
ING EXPENSES OUT OF SCHOOL FUND.

Tallahassee, Fla., April 13th, 1911.

Hon. W. M. Holloway,
State Supt. Public Instruction,
Tallahassee, Florida.

Dear Sir:—

In reply to your request as to whether or not a county Board of Public Instruction is authorized to approve and

order paying out of the county school fund an expense account incurred by the County Superintendent of Public Instruction in attending a meeting of the County Superintendents of Public Instruction of this State, which said meeting has been called by the State Superintendent of Public Instruction, beg to advise that the only expression of our law which I find governing the expenditures out of the county school fund is Section 9 of Article XII of the Constitution of Florida, which section among other things provides that the school fund "shall be dispersed by the County Boards of Public Instruction solely for the maintenance and support of public free schools." The word "solely" when used in the manner in which it is used in this section of the Constitution is construed to be a word of restriction or exclusion.

In view of this rule of construction and the said provision of the Constitution, which says that the county school fund "shall be dispersed by the County Boards of Public Instruction solely for the maintenance and support of public free schools" it is my opinion that the law does not authorize a County School Board to spend the county school funds for the purpose of defraying the expenses of County School Superintendents while in attendance upon a State convention of the School Superintendents.

I regret to find that there is no authority for the allowance of such items of expense, where it is deemed a wise expenditure by the County Boards of Public Instruction.

Respectfully submitted,

BOUNDARY LINE OF COUNTIES.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

Replying to your oral request for an opinion as to

whether the fact of an artificial change being made in the channel of a stream, forming the boundary line between such counties, beg to advise that an artificial change in the course of a stream forming the boundary between counties which causes a new channel does not operate to change the legal boundary between the two counties.

Yours very truly,

BONDS—WITHDRAWAL OF SURETY ON.

Tallahassee, Fla., May 13th, 1911.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your letter of the 9th inst. enclosing letter from Shepard Bryan, of Atlanta, Georgia. You wish my opinion upon the subject of Mr. Bryan's letter, which inquiry asks to know whether or not the State of Florida has any law prohibiting a surety company which has the bond of a bank official, from withdrawing the bond.

I beg to advise that I have been unable to find any law prohibiting such withdrawal of bond in accordance with the terms of the surety bond.

Respectfully submitted,

PAYMENT OF FAIR PREMIUMS.

Tallahassee, Fla., May 30th, 1911.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Senator McMullen and Mr. Brorin have stated to me that you wish my opinion as to whether the provisions of Chapter 5603 of the Acts of 1907 would interfere with you issuing warrants in accordance with the Act passed at this session of the Legislature providing for an appropriation for the purpose of paying the Florida State Mid-Winter Fair Association premiums, I beg to advise that I do not think that the Act of 1907 is applicable to the appropriation made for the payment of said premiums.

Respectfully submitted,

MID-WINTER FAIR PREMIUMS PAYMENT.

Tallahassee, Fla., June 16, 1911.

*Hon. A. C. Croom, Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Answering your communication of the 8th, inst., wherein you invite my attention to the Act passed by the Legislature recently adjourned making an appropriation of Thirty Thousand Dollars for the payment of premiums offered and awarded by the Florida State Mid-Winter Fair Association under Chapter 5734 of the Acts of 1907,

and request my opinion as to your authority under said Acts to pay the following certificates, to-wit:

No. 916	Lake City Index, printing.....	\$ 25.00
No. 914	Gainesville Sun, printing	25.00
No. 908	Tampa Morning Tribune, printing....	250.00
No. 1042	Bearer, cost of diplomas, etc.....	560.00
No. 977	Bearer, cost of diplomas, etc.....	554.00

I beg to advise that Section 2, of the Act of 1911, as a limitation upon the appropriation and the purpose for which it shall be paid out contains the following provision; "Provided the sum herein appropriated shall only be used in payment of premiums or prizes as first advertised by the Florida State Mid-Winter Fair Association."

Chapter 5734, of the Acts of 1907, being the Act providing for and authorizing the appropriation for premiums in the first instance limits the purpose for which the appropriation is made by a provision in Section 1, of the said Act as follows; "Provided, however, that the said sum of fifteen thousand dollars annually shall be used entirely for the payment of premiums for the purpose of introducing competition among the producers of products grown in Florida, and shall be *used for no other purpose*, and that the said *premiums* shall be open for the competition of every county and individual producer in the State of Florida, and shall be applied to the payment of county and individual *premiums only* and not for the erection of exposition buildings or in any other way defraying the expenses incurred by the said Florida State Mid-Winter Fair Association."

While the language of these two Acts clearly define the purpose for which the appropriation was made the legislative intent is even plainer when we take into consideration the circumstances existing at the time of the passage of the Act of 1907. At that time the Florida State Mid-

Winter Fair Association, a private corporation incorporated under the laws of Florida, within the bounds of its authority, was each winter carrying on what was known as a "State Fair." The Fair was not under State control or management but solely the enterprise of a private corporation. This corporation directed all expenditures, managed and directed the Fair and received all proceeds from the enterprise. Believing it for the public good that the making of exhibits at said Fairs be encouraged, the State through its Legislature in 1907, provided the appropriation for this purpose. The Act specifically states; "that the said sum of fifteen thousand dollars annually shall be used entirely for the *payment of premiums* for the purpose of introducing competition among the producers of products grown in Florida and *shall be used for no other purpose.*" Another clause provides that the appropriation is for the "payment of county and individual *premiums only.*" As a further limitation the Act of 1907, states that the appropriation shall not be used "for the erection of exposition buildings or in any other way defraying expenses incurred by the said Florida State Mid-Winter Fair Association." The Act passed by the last Legislature as above quoted contains this limitation; "the sum herein appropriated shall only be used in the payment of *premiums or prizes* as first advertised by the Florida State Mid-Winter Fair Association to be given or awarded."

Construing the Act of 1911, and the Act of 1907, together it is my opinion, that the appropriation made by the Legislature at its recent session is for the purpose of "payment of *premiums* for the purpose of introducing competition among the producers of products grown in Florida." The list of such premiums being limited by the recent Act to those "premiums or prizes as first advertised by the Florida State Mid-Winter Fair Association to be given or awarded."

The State under these Acts undertook nothing more

than the payment of *premiums* awarded upon exhibits of products, leaving to the Fair Association, which was operating the Fair the duty of defraying all expenses.

The items about which you make inquiry are not premiums awarded upon exhibits of "products grown in Florida," and upon an examination of list of premiums as first advertised I do not find these items, therefore, my duty compels me to advise that under the law I find no authority for the payment of the same by you.

Following the general rule of statutory construction, our Supreme Court in the case of *Palmer vs. Parker*, 52 Florida Report p. 389, held that in construing a statute that if the language is clear and admits of but one meaning, the Legislature should be held to have intended what it has plainly expressed. It is under this rule of construction that I base the foregoing opinion.

Respectfully submitted,

AUTOMOBILE TAX LAW OF 1911.

Tallahassee Fla., Aug. 23, 1911.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

Replying to your communication asking my construction upon several features of the automobile tax law, the same being Chapter 6212 of the Acts of 1911, I beg to say that on account of the provisions of the said Act failing to make clear the points about which you make inquiry it is a difficult matter to determine just what was the intention of the Legislature upon the questions raised. After some investigation I fail to find any decisions in our own

State or from other States directly on these points. Following the general rule of construction that all Acts upon a subject should be construed together and also that no law should be construed to have a retroactive effect, unless it clearly appears in the law that this was the intention of the law-making power, I beg to suggest and advise that as the license year under the general license tax law begins October 1st that persons who obtain an annual license should obtain the same covering a period dated from October 1st. Thereafter, the issuance of a license for the fractional part of the year should be governed by the general license tax law of 1907. As the law went into effect on August 2nd it is my opinion that the tax should be paid upon a proportionate basis for the fractional part of the year from August 2nd to October 1st, being for two months only.

As the license tax provided is a county tax, exclusively, it is my opinion that the county commissioners should provide all necessary blanks for the application and for the license, and should also furnish the metal tags required to be used. As to the form of blanks, the authorities can ascertain from the Act what information is necessary to be set forth by the applicant.

The law does not contemplate that a regular form for State and county license should be used. I find nothing in the law indicating that a person who has taken out a garage license should be exempt from the provisions of the said Act.

As to whether the tags to be used shall be uniform throughout the State or not, the Act fails to indicate. It is, therefore, my opinion, from the language of the law, that uniformity throughout the State is not required.

I am returning herewith letters from Hon. P. H. Wright, Hon. C. L. Bandy, Hon. H. B. Saunders, Jr., and Hon. W. G. Long, as per your request.

Respectfully submitted,

UNFINISHED BUSINESS OF ABOLISHED COURT.

Tallahassee, Fla., Sept. 7th, 1911.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

Answering your inquiry relative to paying the supplementary payroll for jurors serving at the June term of the Criminal Court of Record of Suwannee County, I beg to advise that the jurors were entitled to \$3.00 per day under the law, while they only received \$2.00 per day. This being true, they are entitle to the balance of \$1.00 per day, and while the law does not expressly so provide it is my opinion that these witnesses may be paid the balance due them through the Clerk of the Circuit Court who had transferred to him the unfinished business of the Criminal Court of Record.

Respectfully submitted,

CONTENTS OF PACKAGE—PURE FOOD LAW.

Tallahassee, Fla., Sept. 19, 1911.

*Hon. B. E. McLin,
Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:—

Replying to your letter of the 5th inst., wherein you wish to know if under the proviso to the fourth paragraph under the sub-head, "In Case of Food of Section 5, of the Pure Food Act approved June 5th, 1911, compounds such as "cottolene" would be exempt from having placed

thereon the net contents of the package. I beg to advise that the rule of construction is that the legislative intent shall govern as far as it can be ascertained from the act. Following this general rule of construction it is my opinion that the proviso was intended to relieve the manufacturer's of "cottonene" or any similar articles known by their own descriptive name, from the requirement of the third paragraph, that the net contents of the package be stated on the outside of the package.

Sutherland on statutory construction, Section 352, says: "The natural and appropriate office of the proviso being to restrain or qualify some preceding matter, it should be confined to what precedes it unless it clearly appears to have been intended to apply to some other matter. It is to be construed in connection with the section of which it forms a part, and it is substantially an exception." "It should be construed with reference to the immediately preceding parts of the clause to which it is attached."

Respectfully submitted,

LEGAL TITLE TO JACKSON SQUARE —LOCATE
FLORIDA SUPREME COURT BUILDING.

Tallahassee, Fla., September 28, 1911.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

My dear Sir:—

Replying to your communication wherein you request my opinion upon the title to that certain tract of land located in the City of Tallahassee, commonly known as "Jackson's Square," I beg to advise that by an Act of Congress, approved March 24th, 1824, the United States

Government granted to the then Territory of Florida one quarter section of land at the point selected for the permanent seat of government of the Territory, said land being granted as a location for the capitol building and aid in the erection thereof.

After the aforesaid grant by the Federal government, the Legislative Council of the Territory by Act approved December 11th, 1824, provided that the site selected for the seat of government should be laid off in a town to be known by the name of Tallahassee; that a skilful surveyor should be employed to lay off the said town; that three commissioners should be appointed by the Governor, who should superintend the laying off of the town, should sell lots and erect at or near the centre of said town one wing of the capitol to cost not exceeding twelve thousand dollars.

While I have been unable to find any where the original plat of the town, or a copy thereof, it is my opinion from the record of deeds made by the Commissioners of the City of Tallahassee as appear upon the deed records in the Office of the Clerk of the Circuit Court, that soon after the passage by the Legislative Council of the aforesaid Act of 1824, the South East quarter of Section 36 of Township 1, North of Range 1, West was laid off as the Town of Tallahassee and the wing of the capitol provided for by the said Act was located on the present capitol square. The square in question constitutes part of the quarter section above mentioned and was doubtless left as a vacant tract of land on the original plat of the city. I find that on March 17th, 1828 the Commissioners deeded Lot 149 in the City of Tallahassee. Upon reference to the maps now in use in the City, I find this lot to face the street East of "Jackson Square." The City of Tallahassee composed of the Southeast quarter of Section 36, Township 1 North, Range 1 West, was incorporated December 5th, 1825, by the Legislative Council.

It is apparent that the title to the piece of land now known as "Jackson's Square" was by the Act of Congress of 1824 vested in the Territory of Florida. In order to have divested the Territory of its title to the said tract of land there must have been a deeding away of the same or a dedication thereof as a public square. As to how this tract of land was designated on the original map of the city I am unable to say. The oldest map of which I have been able to get any trace, is a map made in 1867, known as the Duval map. By what authority this map was made I am unable to ascertain. There seems to have been no authority from the State. On this map the land in question is designated as "Jackson Square." However, to find the State by this map, it must have been made by a person duly authorized by the State.

A dedication of land for a public park may be established deed, by an oral dedication, by its designation as such on a map or by long acquiescence. There can be no acquiescence on the part of the State and from a very thorough investigation, I find no evidence of an oral, a deed or a map dedication of the land in question as a public square.

From all the evidence I find in existence concerning this property, I fail to find any evidence by which it can be established that the Territory or State ever parted with its title to said property. If the original map of the City of Tallahassee was in existence doubtless it would explain what was the intention of the Territory concerning "Jackson Square," but without it or other evidence of a dedication of said tract as a public square, the title would remain in the State.

The burden of proof is upon the person claiming the dedication and unless further evidence can be discovered than I have been able to find, I believe the Courts would refuse to interfere with the State placing the Supreme Court building on this square.

As my conclusions are based upon the absence of evidence, other than the grant of this land to the Territory by the United States rather than upon evidence in existence, I do not mean to say that my opinion thus reached would be sustained by the Courts if competent evidence is brought forth by any one to the effect that this plat of land was designated as a square or park on the original map of Tallahassee.

A dedication must be proven and I find no evidence of a dedication of this property as a public square; therefore, it is my opinion from all the records I have been able to find that there is no record evidence of the Territory or State ever having parted with the title to the tract of land in question.

Respectfully submitted,

**BOARD OF CONTROL—AUTHORITY TO PURCHASE
LAND FOR STATE INSTITUTIONS.**

Tallahassee, Fla., October 7th, 1911.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Answering your inquiry relative to the Board of Control being authorized to purchase certain land for the use of the Florida School for the Deaf and Blind and also the University of Florida, I beg to advise that upon reference to the legislative journals of 1911, I find that among the items constituting the sum of money appropriated for these institutions, I find that \$5,000.00 was included for the purchase of additional land at St. Augustine, \$6,000.00 was included for purchase and improving

campus at the University, \$4,000.00 for the purchase of land at the Agricultural and Mechanical College for Negroes at Tallahassee. These items being necessary to make up the totals of the appropriations, I am of the opinion that it was the intention of the Legislature that said sums should be used for the said purposes. Therefore I believe the appropriation Act authorized expenditures for the purposes above mentioned.

Yours very truly,

IMMATURE FRUIT LAW—ENFORCEMENT.

Tallahassee, Fla., October 10th, 1911.

*Hon. B. E. McLin,
Commissioner of Agriculture,
Tallahassee, Florida.*

Dear Sir:—

Replying to your letter of the 6th inst. requesting my opinion as to whether or not it is incumbent upon your department to enforce the "Immature Fruit Law," being Chapter 6236, Laws of Florida, Acts of 1911, I beg to advise that I fail to find in this law any provisions directing or making it specifically your duty to enforce the same. The law is a general criminal statute with no special direction or provisions set forth therein for its enforcement. It is incumbent upon the police and other law officers of the State to enforce this as other criminal statutes. The law in nowise refers to the general Pure Food law, further than to contain in the penalty clause the following: "and the fruit whether immature or otherwise unfit for consumption or misbranded shall be subject to seizure and disposition as in the case of adulterated or misbranded foods or drugs." In all cases where a seizure is authorized under the general pure food law, the law specifically defines what constitutes a misbrand-

ed or adulterated article but the statute which we are considering merely makes it unlawful for a person to sell, offer for sale, ship or deliver any "citrus fruits which are immature or otherwise unfit for consumption" and fails to define what constitutes immature fruit unfit for consumption. The standard not being fixed by the law it is a question for the consideration of the courts as to whether or not any particular lot of fruit "is immature or otherwise unfit for consumption." Neither yourself nor the State Chemist are authorized by the Act to fix the definition of "immature fruit unfit for consumption" or to adjudicate the question as to what constitutes "immature fruit unfit for consumption."

While Section 9 of Chapter 6122 of the Laws of Florida, which is part of the general Pure Food Law, would possibly authorize seizure under the "Immature Fruit Law" in cases where the court sustained the charge that the accused was offering for sale or selling citrus fruits which were immature or otherwise unfit for consumption, yet in cases where the accused is acquitted I doubt very much if the authority given by said section would protect you against an action for damages.

Under the general Pure Food law you have the authority to have examinations and inspections made of citrus fruits for the purpose of ascertaining whether there is any misbranded or artificially colored fruit. Construing the "Immature Fruit Law" and the general "Pure Food Law" together it is my opinion that your department is authorized to make inspections of alleged green fruits and make such reports thereon to the proper police and law officers as may be required by law. Under the "Immature Fruit Law," however, the action of your department would perhaps, for reasons herein stated, be entitled to no more consideration than complaint made by any citizen of the State who may complain and allege a violation of said statute.

Respectfully submitted,

RAILROAD TAX LEGALLY DUE.

Tallahassee, Fla., Oct. 20th, 1911.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Fla.*

Dear Sir:—

Replying to your communication wherein you state that the Brooksville & Hudson Railroad Company still owes its 1909 and 1910 taxes, as well as its license tax due October 1st, 1910, and wherein you make reference to the fact that the question was raised some time ago as to whether these taxes were or not legally assessed, and wherein you ask my advise as to what action to take, I beg to advise that, in my opinion, only such part of the railroad track as was in actual existence at the time of the assessment was subject to taxation. The license tax, in my opinion, is assessed for the privilege of operating a public railroad. If this road was a common carrier on October 1st, 1911, it would be subject to the license tax. If it was not it would not be.

I would suggest that the usual method for the collection of delinquent railroad taxes should be followed in an effort to collect the taxes legally assessed in accordance with the above views.

I know there is a contention that the railroad ceased to be a railroad, and was merely a tram road, and for this reason was not subject to taxation as a railroad, but as it was assessed I deem it advisable for the courts to settle the question.

Respectfully submitted,

LICENSE TAX ON STATE BANKS.

Tallahassee, Fla., October 20, 1911.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Replying to your letter of the 13th, inst, wherein you wish to know if a State Bank is not exempt from the license tax in view of the fact that the license tax cannot be enforced against a National Bank I beg to advise that upon a research I fail to find any law indicating that the license tax is invalid against State Banks for this reason.

Respectfully submitted.

SALE OF SECURITIES OF INSURANCE
COMPANIES

Tallahassee, Fla., November 4, 1911.

*Hon. W. V. Knott,
State Treasurer,
Tallahassee, Florida.*

Dear Sir:—

In re application of Mattie C. Walker for sale of securities of the Caladonia Insurance Company to pay a judgment obtained in Citrus County by J. C. Walker.

Replying to your inquiry in the above matter I beg to advise that I find no law or authority which in my opinion authorizes you to suspend or withhold the procedure provided by the Statutes for the collection of the aforesaid judgment against the said Caladonia Insurance Company.

Respectfully submitted.

AUTHORITY OF COUNTY TO PAY CERTAIN BILLS
OF COUNTY TREASURER. DEPUTY SHERIFFS
SALARY. LICENSE INSPECTOR. HORSE
HIRE FOR SHERIFF. COUNTY
ENGINEER.

Tallahassee, Fla., November 4, 1911.

Hon. Albert W. Gilchrist,
Governor.
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your communication of October 28th, which reads as follows:

“The following is a quotation from the report of the State Auditor, dated October 27th, referring to Duval County:”

“It appears that the Treasurer is in this predicament. Both the School Board and the County Commissioners refuse to pay his commissions for receiving and disbursing the school funds. There is no question of the correctness of his bill, but each board contends that the other should pay it. It is customary for the School Fund to pay these commissions and in my judgment should be paid out of this fund.

“Kindly let me know from which fund these commissions should be paid.

Payment monthly to Sheriff for Deputy at Panama,	
salary	\$20.00
Horse Hire, \$1.00 per diem per month.....	30.00
Servant at jail, 75c per diem per month.....	20.00
Guard at jail, \$1.00 per diem per month.....	30.00

“Please let me know if the County Commissioners have any authority to make such payments.

"The Board employs a Civil Engineer at a salary of \$1,800 per annum, who has supervision of the County Road Building.

"Have the County Commissioners a right to employ Civil Engineer?

"A License Inspector is also employed at a salary of \$80 per month.

"Have the County Commissioners a right to employ such Inspector?

"The payment to physicians for autopsies run from \$20.00 to \$100.00. What is the maximum amount allowed a physician for such purposes?

"The clerk is paid by the county for indexing records. Have the County Commissioners a right to pay the clerk for such?"

Replying to your inquiry I beg to advise as follows, to-wit:

1st. That in my opinion the School Board should pay the commissions due the Treasurer for receiving and disbursing the school funds.

2nd. That I find no law authorizing the County Commissioners to make monthly payment to Sheriff for,

Deputy's salary\$20.00

3rd. That under the provisions of Section 1683, it is my opinion that the County Commissioners may allow to the Sheriff pay for the hire of a servant at the rate of not more than seventy-five cents per day. The services rendered to be for the county and not the sheriff personally.

4th. That I find in Section 1683, that the Sheriff is allowed for "guards not more per day than \$1.00." It is my opinion that the Commissioners under this provisions of the law have authority to allow pay for a guard

at jail at the rate of \$1.00 per day, if a guard is actually required for the safe keeping of the prisoners.

5th. That I find no law authorizing the Commissioners to pay the Sheriff for "Horse Hire \$1.00 per diem, per month \$30.00." While section 1683, provides for "horse hire, no more per day than \$1.00." I do not think the law contemplates that the Sheriff shall have a horse furnished to him regularly at the expense of the County.

6th. That I find no law authorizing the Commissioners to employ a License Inspector, and it is therefore, my opinion that the employment of a License Inspector at a salary of \$60.00 per month is unauthorized.

7th. That I fail to find any law authorizing the Commissioners to employ a Civil Engineer as Superintendent of the County Road building at a salary of \$1,800.00 per annum. Section 852 of the General Statutes makes provision for the employment by the Commissioners of a county Road Superintendent at a salary of not more than two dollars per diem for each day that he is actually engaged in the discharge of his duties. The Road Superintendent should supervise, direct and have charge of the maintenance and building of all public roads. The said superintendent to be subject to general supervision of the Board of County Commissioners.

8th. That the fee for post mortem examination, is fixed by the provisions of Section 4101 of the General statutes at ten dollars. This seems to be the only fee authorized by the law for autopsies.

9th. That it is my opinion that the law does not contemplate or authorize the Commissioners to pay the Clerk of the Circuit Court for indexing records of private conveyances filed with him for record.

Respectfully submitted,

COUNTY OFFICERS—RESIDENT OF NEW COUNTY,
BUT COMMISSIONED FOR OLD COUNTY.

Tallahassee, Fla., November 24th, 1911.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your letter of this date wherein you state that you are in receipt of a telegram from Mr. R. H. Sammons, of Tarpon Springs, Florida, who holds a commission as Justice of the Peace for the Fourteenth Justice District of Hillsboro County, reading as follows:

“County Attorney Raney advises me that I have no authority as State officer in Pinellas or Hillsboro County. I have both civil and criminal actions pending which require my attention. Tampa officials refuse to issue or certify and process in this jurisdiction. Wire me what action to take,” and wherein you request my opinion upon the question raised in said telegram.

Replying to your communication, I beg to advise that it is my opinion that Mr. Sammons is no longer a Justice of the Peace of Hillsboro County, as his former district is now in Pinellas County. There are no Justice Districts in the new county, as said Pinellas County has not yet been divided into Justice of the Peace Districts as required by Section 2066 of the General Statutes; therefore he has no authority as a judicial officer in either county.

All of the offices in the new county of Pinellas remain vacant until filled by you as required by Section 4 of Chapter 6247, of the Laws of 1911.

Respectfully submitted,

PURE FOOD LAW—BENZOATE OF SODA.

Tallahassee, Fla., November 25th, 1911.

*Hon. B. E. McLin,
Commissioner of Agriculture,
Tallahassee, Florida.*

Dear Sir:—

I am in receipt of your letter of Oct. 28th, 1911, which reads as follows:

"I here hand you a communication in the form of a brief from Messrs. Kay & Doggett, attorneys at law of Jacksonville, Florida, in which is discussed the proposition of the goods sold by their clients, to-wit: The Blue Label Catsup Manufacturing Company, in which they undertake to show that their goods are exempt from the provisions of our pure food and drug statute as amended and passed by the Legislature of 1911.

The Commissioner of Agriculture, under the advice and co-operation of the State Chemist, has held that these goods are not exempt from the provisions of our law, and that they are not permitted to use preservatives such as benzoate of soda in the preserving of their goods, and that same can not be legally sold in Florida or shipped into the State other than as permitted under our regulation No. 3, which is promulgated in order to indicate the method that would be pursued by this department in the enforcement of said law.

We would be glad to have your opinion on this subject at as early a date as is practicable."

Replying thereto I beg to advise that Section 4 of Chapter 6122 of the Laws of 1911, provides as follows, to-wit: "That for the purpose of this Act, an article shall be deemed to be adulterated" (Paragraph eight). "If it contains any chemical preservative or anti-ferment; such as

formaldehyde, salicylic acid or solicylates, boric acid or borates, benzoic acid or benzoates, or fluorides."

In construing a statute, it must be so construed as to effect to the evident legislative intent, even if the result seems contrary to rules or construction and the strict letter of the statute. *K. & W. Co. vs. T. S. L. B. Co.*, 55 Fla. 728. *Curry et al. vs. Lehman*, 55 Fla. 847.

In seeking to arrive at the legislative intent as it appears in the said Section 4 of Chapter 6122 of the Laws of 1911, it is my opinion that the Legislature intended to make the use of benzoates in foods, an adulteration thereof.

While the words "such as" when used in many connections and ways may mean "similar to" or "of the like kind," it is my opinion that it was not the legislative intent that it should have such meaning in this statute. Section 4 of said Act sets out to define and prescribe what shall be deemed an adulteration of foods and drugs. Paragraph eight of said section, intended to designate as adulterants the preservatives therein named, and this I think to have been the legislative intent, although the words "such as" were used preceding the articles set forth. The evident legislative intent was that the use of the preservatives named in said paragraph eight should constitute an adulteration.

Further answering your inquiry, I beg leave to advise that I am of the opinion that "Blue Label Tomato Cat-sup" is not a distinctive name as contemplated by the first section of paragraph four, under the sub-head, "In Case of Food," of Section 5 of said Chapter 6122, which reads as follows, to-wit: "In the case of mixtures or compounds which may be now, or from time to time, hereafter known as articles of food under their own distinctive names, etc."

The U. S. Department of Agriculture, by regulation 20, defines a "distinctive name" to be "a trade, arbitrary, or fancy name which clearly distinguishes a food product,

mixture, or compound from *any other* food product, mixture, or compound."

It is my opinion that "Blue Label Tomato Catsup" is not a distinctive name that clearly distinguishes it as a food product or mixture *from any other* food product or mixture. The words "Tomato Catsup" is the name of the food product or mixture, and the words "Blue Label" constitute merely the trade mark or brand under which Curtice Brothers sell their "Tomato Catsup." Many companies sell "Tomato Catsup," and practically all of them have a trade mark or brand under which they sell the food product or mixture commonly known as "Tomato Catsup." What do we find in any of these brands to indicate that one "Tomato Catsup," although it may have a different brand, is a distinct food product or mixture and not a similar food product or mixtures to other Tomato Catsups.

Can we say that in the name "Blue Label Tomato Catsup" we find anything that indicates that the mixture so labeled is a food product or mixture clearly distinguished by such name as a food product or mixture from any other brand of tomato catsup. "Blue Label" indicates the brand of the article—"Tomato Catsup" is the name of the food product or mixture.

Respectfully submitted,

AUTHORITY OF COUNTY COMMISSIONERS TO EMPLOY A CIVIL ENGINEER.

Tallahassee, Fla., Nov. 25, 1911.

Hon. Albert W. Gilchrist,
Governor,

Tallahassee, Fla.

Dear Sir:—

Replying to your letter of this date wherein you say the

Board of County Commissioners of Duval County "employs a Civil Engineer at a salary of Eighteen Hundred Dollars per annum, who has supervision over the county road building," and ask me to advise you whether the said Board is authorized by law to employ a civil engineer at a salary of Eighteen Hundred Dollars per annum, to have supervision over the county road building, I beg to advise that Section 852 of the General Statutes prescribes the duties, and fixes the salary of the County Road Superintendent at "not over two dollars per diem for each day he is actually engaged in the discharge of his duties." It is his duty "to supervise, direct and have charge of the maintenance and building of all public roads, culverts and bridges in the county, and he shall submit to the Board of County Commissioners an itemized monthly report of all work done and in progress and moneys expended."

If the Civil Engineer employed by the Duval County Board has such supervision over the county roads of Duval County as prescribed by Section 852, and performs the duties therein required of the County Road Superintendent, then he is in fact the Road Superintendent of Duval County, and only entitled as such Superintendent to the salary allowed by the said Section 852 of the General Statutes. If the said Civil Engineer is not exercising and performing the duties and functions required of the County Road Superintendent, but is merely engaged as Civil Engineer to perform the engineering work and other expert services that may be necessary in the building of a system of hard surface roads with the funds arising from a million-dollar bond issue, then, I think, his employment authorized under the general authority of the Board of the County Commissioners as being incidental and necessary to their duty to build the hard surface roads. I have given my opinion upon two assumed conditions, for the reason that I am unable to determine from your letter whether the Civil Engineer is employed to perform engineering work and other expert work in con-

nection with the road building in Duval County or is employed as the County Road Superintendent.

Respectfully submitted,

BONDS OF CITY OF JASPER.

Tallahassee, Fla., November 28, 1911.

Hon. W. V. Knott,
Treasurer,
Tallahassee, Florida.

Dear Sir:—

I beg to advise that I have examined the certified copies of the records under which the City of Jasper, Florida, issued under date of July 15th, 1911, a \$30,000 issue of Municipal Bonds, and beg to advise you upon a consideration of these records and the validating Act passed by the Legislature of 1911, I am of the opinion that the said bonds constitute a legal and binding obligation of the said City of Jasper, Florida.

Respectfully submitted,

MERGER OF INSURANCE COMPANIES.

Tallahassee, Florida, December 15, 1911.

Hon. W. V. Knott,
Treasurer,
Tallahassee, Florida.

Dear Sir:—

Answering your inquiry as to whether or not the merger or consolidation of "The Spring Garden Insurance Company" of Philadelphia, "Union Insurance Company" of

Philadelphia and "The Insurance Company of the State of Pennsylvania" constitute a new company in contemplation of our laws requiring the payment of charter fees, I beg to advise that, in my opinion, the "Insurance Company of the State of Pennsylvania" is a new corporation, with increased capital, and different powers from the old company by the same name.

We have no law in this State taking care of a merger or consolidation, therefore I believe when the new corporation desires to do business in Florida it would have to file its charter and pay the required charter fee.

Respectfully submitted,

AUTHORITY TO ARREST ON NAVIGABLE WATER IN THE STATE.

Tallahassee, Fla., January 3, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your letter of January 1, 1912, asking my opinion as to whether or not you should instruct the Sheriff of Washington County to serve extradition warrant upon Mrs. C. C. Adams, who is wanted by the State of Alabama, and who is now on St. Andrews Bay aboard a boat, will advise that it is my opinion that a Sheriff may arrest a person on board a boat in St. Andrews Bay, as this body of water is within the limits of the jurisdiction of the State of Florida, therefore you have the authority to instruct the arrest.

Respectfully submitted,

TITLE TO LANDS PURCHASED FOR THE UNIVER-
SITY OF FLORIDA.

Tallahassee, Fla., January 5, 1912.

Hon. J. G. Kellum,
Secretary Board of Control,
Tallahassee, Florida.

Dear Sir:—

In compliance with the request of the Board of Control, I beg to advise that I have examined the two abstracts submitted to me, covering the land which is being purchased from Mr. Thomas and Mr. Glazier for the University at Gainesville, and beg to report as follows:

It is my opinion that W. R. Thomas and H. H. Glazier are the owners in fee simple of the said property, subject only to a mortgage given by H. H. Glazier upon a half interest in the land in favor of W. R. Thomas Live Stock Company. A satisfaction of this mortgage should be procured.

I have examined the deed submitted and find the same to be a warranty deed, regular in form except the notary public who took the acknowledgement of Mr. and Mrs. Thomas failed to affix his official seal. The seal should be affixed. As to whether or not the description set forth in the deed covers the property being purchased, I would advise that you check over the same, as I do not know the description of the property being purchased.

Respectfully submitted,

INSURANCE ON ASSESSMENT PLAN.

Tallahassee, Fla., January 15, 1912.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Florida.

Dear Sir:—

Replying to your letter of the 9th inst., wherein you transmit to me the charter and by-laws of the "National Life Association" of Des Moines, Iowa, and ask my opinion as to whether or not this company is subject to the laws of this State applicable to life insurance companies, I beg to advise that, in my opinion, said association is subject to the laws of this State governing life insurance companies. Sections 2758 and 2759 of the General Statutes seem to make no exception on account of an insurance business carried on upon the assessment plan.

Respectfully submitted,

ALACHUA AND MARION COUNTIES—BOUNDARY.

Tallahassee, Fla., February 14, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

In compliance with your request, dated February 2, 1912, in which is enclosed various correspondence upon the subject as to whether or not Orange Lake is in Alachua or Marion County, I beg to advise that:

- (1) Section 36, General Statutes, defining the boun-

dary lines of Alachua County gives the southern margin of Lake Orange as the boundary.

(2) Section 37, General Statutes, defining the boundary line of Marion County, gives the southern margin of Orange Lake as the boundary.

There seems to be no doubt about the said Lake being in Alachua County.

(3) Section 1 of Chapter 5971, Acts of 1909, provides that no fresh water fish shall be shipped out of the county when caught from the fresh water of Alachua County.

(4) Section 2, Chapter 5972, Acts of 1909, makes it unlawful for any common carrier to transport such fish; except catfish from Alachua County.

(5) Chapter 6261, Acts of 1911, provides what size and kind of fish that may be caught from the fresh water lakes and streams of Alachua County, etc.

(6) Section 3763, General Statutes, provides the size and kind of devices prohibited in catching fish and the exceptions. This section is a general law and applies in all counties not having a special law upon that feature.

(7) Section 3770, General Statutes, makes it the duty of the Sheriff of each county to see that the fish laws are enforced.

I deem it needless for me to quote the acts and statutes above referred to as they may be found in the office of the County Judge or in the office of the Clerk of the Circuit Court, and it would be rather voluminous if I should try to put it in a letter.

Respectfully submitted,

BUILDING AND LOAN ASSOCIATION—MONEY
LENDING.

Tallahassee, Fla., February 29, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

Replying to your letter of February 13, 1912, in which you request me to examine the attached proposed charter of Providence Home Association and advise whether it complies in form and substance with the provisions of law governing such corporations, I beg leave to advise that I have examined the proposed charter, and it is my opinion that Article II of said charter does not conform to Chapter 2738, General Statutes of Florida, which clearly defines the special provisions of law for building and loan associations, in that said proposed charter proposes to do a money-lending business and secure payments by notes or bonds secured by mortgage, without stating that loans shall be made to stock or certificate holders only and for their benefit.

The last sentence of said article provides that "the objects and purposes specified in the article shall be construed as to independent objects and in furtherance and not in limitation, etc."

Also Article III of said proposed charter does not conform to Section 2737, General Statutes of Florida, in regard to amount of capital stock and shares to be issued in series.

Yours very truly,

WOMEN AS STUDENTS OF UNIVERSITY OF
FLORIDA.

Tallahassee, Fla., March 25, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Fla.

Dear Sir:—

Replying to your inquiry as to whether or not a woman may be permitted to take a course in Agriculture at the State University, I beg to advise that Section 23 of Chapter 5384 of the Laws of Florida, provides that no person shall be admitted to said university except white male students.

Respectfully submitted,

WHEN ELECTIVE OFFICE MAY BE FILLED—
PENDING AD INTERIM APPOINTMENT

Tallahassee, Fla., April 4, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

My dear Sir:—

I beg leave to acknowledge receipt of your communication of April 1st, 1912, to which was attached a communication from Hon. A. R. Campbell, who asks your opinion as to when his term of office as Clerk of the Criminal Court of Record of Walton County expires—he being elected to same at the general election 1910.

Section 30 of Article V of the Constitution reads as follows: "Section 30. The Clerk of said court (Criminal

Court) shall be elected by the electors of the county in which the court is held and shall hold office for four years * * *."

Section 9 of Article XVIII of the Constitution as amended in 1896 provides that "A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, 1896, and every two years thereafter for all elective State and County officers whose terms of office are about to expire, for any elective office that shall have become vacant."

Section 3874 of the General Statutes provides: "When a criminal court of record is established in any county prior to the next general election or in any county where no clerk of said court has been elected, the Governor shall fill the vacancy thereby created by appointing a clerk of said court who shall hold office until next general election.

Section 11 of Chapter 6018, Acts of 1909 creating the Criminal Court of Record of Walton County, provides: "There shall be a clerk of said court, who shall be elected by the qualified electors of the county at the same time and in the same manner as the general election is held in said county, once every four years * * *."

It is my opinion derived from the Constitution and the statutes above quoted that the office is filled by election at a general election for a term of four years and that a general election is required to be held every two years, and that if the present incumbent was elected in November 1910 as provided by General Statutes and as further provided by Section 11 of Chapter 6018, Acts of 1909, that his commission should be for a term of four years, or till his successor is duly elected at the general election in 1914 and qualified.

Respectfully submitted,

JUSTICE OF THE PEACE—JURISDICTION IN
CIVIL CASES—WHO EXECUTE PROCESS.

Tallahassee, Fla., April 15, 1912.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

My dear Sir:—

I beg to acknowledge receipt of your letter of April 13th, 1912, with a letter, a writ of execution and a warrant for arrest thereto attached which was submitted to you by James Robbirds, a constable of the Eighth Justice Peace District of Jackson County, in which you ask my advice.

(1) As to whether or not the Justice of the Peace can lawfully issue the above described paper, and,

(2) As to whether or not a Justice of the Peace has lawful authority to designate a person other than the regularly commissioned constable to serve the paper issued from such district.

Answering the first (1) question will advise that Section 2073 of the General Statutes of Florida provides that the jurisdiction of a Justice of the Peace Court extends to all civil cases involving not over one hundred dollars, and Section 3898 provides that the Justice of the Peace shall have jurisdiction in all misdemeanors punishable by fine of not exceeding \$500.00 or by imprisonment not exceeding six months or by both such fine and imprisonment. There is no County Court in Jackson County.

Answering the second (2) question will advise that Section 3902 of the General Statutes provides that "The sheriff or any constable of the county shall be the executive officer of the courts of the Justices of the Peace, but if the sheriff or constable shall for any reason be dis-

qualified or unable to act, justices of the peace may appoint any individual, not interested in the case on trial, to serve process and to perform all duties of such executive officers."

The constable, or the sheriff (or his deputies) should be designated to serve process unless they are disqualified or unable to act.

Respectfully submitted,

PILOT COMMISSIONER HOLDING POSITION OF
QUARANTINE OFFICER.

Tallahassee, Fla., May 23, 1912.

Hon. Albert W. Gilchrist,
Governor of Florida.

Sir:

Your communication of May 15th, 1912, which reads as follows:

"My attention has been invited to the fact that a Pilot Commissioner has been appointed Quarantine Physician at the same port. He is, therefore, holding two appointments. My impression is that the Quarantine Physician is an appointee of the United States Marine Hospital. Kindly inform me whether or not it is legal for the two positions to be held by the same man," has been received at this office; also your communication of May 23rd, 1912, relative to the same matter, to which you attach a letter from Dr. J. Y. Porter, State Health Officer, which reads as follows:

"Dear Governor:—

Acknowledging and replying to your letter of the 15th, I beg to say that the quarantine service or rather the

maritime sanitary is operated by the United States Government, the Public Health and Marine Hospital Service:

"The officers and employes of this service are appointed and paid by the U. S. Government Treasury Department.

"It has probably slipped your mind that in 1901 the Legislature, by enactment sold the State Quarantine Stations to the U. S. Treasury Department, and since that time the U. S. has operated the maritime supervision of the Florida coast. * * *"

The question here presented is whether or not a person holding or exercising the functions of Quarantine Physician under the government of the United States, may hold the office of Pilot Commissioner under the laws of this State, at the same time.

Section 15 of Article 16 of the Constitution of Florida reads as follows:

"No person holding nor exercising the functions of any office under any foreign government, under the government of the United States, or any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; * * *"

A Pilot Commissioner is made an officer of this State by Section 1292 of the General Statutes of Florida.

The only question remaining is whether or not the person designated as "Quarantine Physician" is an officer or is exercising the functions of an office under the Government of the United States. If the person is exercising such function by appointment from the Treasury Department of the United States supervised by the Public Health and Marine Hospital Service, he would fall within the prohibition of Section 15 of Article 16 of the Constitution of this State.

Respectfully submitted,

EXPENSES OF CONVEYING PRISONER UPON
ORDER OF THE GOVERNOR.

Tallahassee, Fla., May 25th, 1912.

Hon. Albert W. Gilchrist,
Governor of Florida.

Dear Sir:—

Your communication of May 24th, 1912, has been received at this office, and attached thereto is two cost bills for conveying prisoner, Lee Collins, presented to you for payment by Sheriff H. H. Lewis, of Jackson County, which communication reads as follows:

“Some months ago, one Lee Collins committed a murder in Calhoun County. He was soon thereafter arrested and under the provisions of Section 4105 of the General Statutes, was lodged in the Duval County Jail, at Jacksonville, for safe keeping.

“At the Spring Term, 1912, of the Circuit Court for Calhoun County, the said Lee Collins was indicted for murder in the first degree. Upon his request a change of venue was granted by the Circuit Court to Jackson County. The case of the State vs. Lee Collins was set for trial in Marianna on May 7. A day or two prior to said date the Sheriff of Jackson County sent two of his deputies to Jacksonville and had them return with the said Lee Collins to Marianna. On said date, the said Lee Collins was arraigned before the Circuit Court at Marianna, and a trial was set for one week thereafter, to-wit, May 14. By order of the Circuit Court, Lee Collins was sent for safe keeping to the Leon County Jail in Tallahassee. Fearing that violence might result if the prisoner was kept in Tallahassee, I had the said Lee Collins taken to the Duvay County Jail to remain until the date fixed for his trial. I had Lee Collins returned to Marianna under guard on May 13.

"On or about May 14, he was tried by a jury in the Circuit Court for Jackson County. It appears that there was considerable excitement in Marianna and it was believed that there was danger that the said Lee Collins would be lynched if not quickly removed from that section of the State. In these circumstances, the Circuit Judge ordered the Sheriff of Jackson County to take the said Lee Collins through Southern Alabama and Southern Georgia, back to Duval County Jail for safe keeping.

"The Sheriff of Jackson County has submitted to me two bills in this matter and asked how they are payable under the law. The said bills are hereto attached. The bill in the sum of \$138.00 is for the costs of returning Lee Collins from Jacksonville to Marianna for appearance and arraignment on May 7. Please advise me whether the State or Calhoun County should pay this bill. If the State, from what appropriation? The bill in the sum of \$142.80 is to cover the costs of removing Lee Collins from Marianna to Jacksonville, by order of the Circuit Judge *after his conviction and sentence* for murder in the second degree. Please advise me how, under the law, this bill should be paid."

In answer to the question here presented will advise that it is my opinion that the bill as presented covering the costs of conveying Lee Collins from Marianna to Jacksonville after the sentence and conviction is a cost that can properly be paid from the Governor's contingent fund. The bill for \$138.00 incurred by the Sheriff in carrying Collins from Jacksonville to Marianna for the arraignment and back to Tallahassee for confinement in the Leon County Jail should be presented to Calhoun County for payment.

Respectfully submitted

AUTHORITY OF STATE TREASURER TO RECEIVE
MONEY FROM BOARD OF TRADE OF JACKSON-
VILLE TO PAY EXPENSE OF LEGISLATIVE
SESSION.

Tallahassee, Fla., June 10, 1912.

Hon. Albert W. Gilchrist,
Governor of the State of Florida,
Tallahassee, Florida.

Dear Sir:—

Replying to your communication of the 7th inst. wherein you state "that the Board of Trade of Jacksonville desires to deposit with the State Treasurer a sum of money sufficient to defray all the expenses of a special session of the State Legislature which the said Board of Trade desires the Governor to call for the purpose of enacting certain legislation in the interest of the city of Jacksonville" and request that I advise you whether or not, under the law,* the State Treasurer would be authorized to receive such deposit of money, to be used for said purpose. I beg to advise that Section 24 of Article IV of the State Constitution provides that "the Treasurer shall receive and keep all funds, bonds and other securities, in such manner as may be prescribed by law."

The Treasurer has no inherent right to receive a deposit for the purpose of defraying the expenses of a special session of the Legislature. Whatever authority he may have, if any, to receive such donations, must be given him by law, and upon an examination of our statutes I fail to find any law providing for and authorizing the State Treasurer in his official capacity to receive from a private source a donation for the purpose of defraying the expenses of a special session of the Legislature. Any funds deposited with him subject to the appropriation bill for the payment of the expense of such special session of the

Legislature would strictly speaking not be held by him as State Treasurer but merely in a personal capacity.

Respectfully submitted,

STATE BANKS—CONTRACTS FOR BUSINESS OUT
OF THE STATE.

Tallahassee, Fla., July 1st, 1912.

*Hon. W. V. Knott,
State Comptroller,
Tallahassee, Florida.*

Dear Sir:—

I am in receipt of your letter of June 6th, wherein you state: "I submit herewith originals and copies of certain letters, contracts, etc., relating to contracts and agreements executed and sought to be executed by and between certain banking companies organized under the laws of the State of Florida and the Bankers Trust Company, a corporation of Fulton County, State of Georgia."

And further state "There are two separate contracts involved;

"1—A contract by which the Bankers Trust Company is appointed financial agent at a stated salary for five years and given power to perform duties that are required by law to be executed by the Directors and the President and Cashier of each State banking company.

"2—A contract under which each State banking company desiring to enter what is generally called the Witham System is required to deposit with what is called the Depositors Guarantee Fund, a certain sum of money which is added to like contributions from other banks in the system, and out of which any loss by any bank to

the extent of twenty-five thousand dollars is paid. Thereby requiring the banks in the State of Florida that enter into the arrangement to contribute to losses occurring in Georgia, New York, New Jersey, and elsewhere, wherever a Witham Bank is located."

And upon the above statement of facts you request my opinion upon the following questions:

"1—Can the stockholders or directors of a banking company organized under the laws of the State of Florida enter into contract, agreement or understanding to make the Bankers Trust Company of Fulton County, Georgia, financial agent for such company at a fixed salary of \$750.00 per annum for five years under the form of contract enclosed? See printed form of contract and copy of a contract actually entered into in this State enclosed herewith, marked "A" and "B".

"2—Can the stockholders or directors of a banking company organized under the laws of this State enter into a community insurance agreement such as indicated by the form of agreement relating to the Depositor's Guarantee Fund enclosed herewith, marked "C", under which each banking company paying \$2,702.70 is entitled to \$25,000.00 benefits according to certain conditions, stipulations and restrictions which said sum of money is to be taken from the funds of each banking company entering into such agreement."

Replying to your inquiry I beg to advise that I have examined the exhibits submitted by you and find:

1st. That the contract providing for the employment of the Bankers Trust Company of Fulton County, Georgia, as Financial Agent, among other things provides that the said Trust Company, shall "faithfully endeavor to negotiate loans, and borrow money for the party of the first part," which is the bank employing the said corporation.

2nd. That the contract contains a clause as follows:
 "And it is agreed that the party of the second part shall designate and appoint corresponding banks as depositories and reserve agents for the party of the first part."
 The Trust Company being the party of the second part and the bank the party of the first part.

3rd. That the Articles of Agreement of the Depositor's Guarantee Fund in its preamble among other things contains the following:

"We, the officers of the undersigned banks, having been fully authorized, and empowered, by the stockholders of our respective banks, to enter into a plan for relieving our stockholders of their double liability under the banking laws, we do hereby enter into the following agreement for and in behalf of our respective banks for our mutual protection and benefit."

In Article VII it is provided that "any bank operated under the Witham System of banking and continuing under its management and Financial Agent, can apply for membership in this Association and be admitted, upon the approval of the Trustees of this Association and paying not less than \$2,702.70 to the President of the Board of Trustees, or to the Treasurer of the Association, for each \$25,000.00 capital paid in, thereby securing the insurance benefit up to \$25,000.00 limited liability for such payment as provided by the Articles of Agreement of this Association."

4th. Article VIII provides that in no event shall the amount of insurance actually paid exceed the limit of the liability of stockholders under the law.

5th. Article X reads as follows: "That this fund being created for the specific purpose, to-wit, to pay to depositors that amount which the stockholders would have to pay in case of a failed bank, it is further agreed and understood that the Trustees are not to pay any part

of this fund out except to satisfy depositors as explained in the following *Article XI*."

6th. Article XI provides that the insurance benefits shall only be paid to the depositors, upon the condition that the same is accepted and credited upon the amount due by the stockholders of said bank to depositors on account of what is known as "the stockholders liability."

The question involved in the contract appointing the Bankers Trust Company, a Georgia corporation, of Fulton county, as Financial Agent for a Florida Bank, is whether or not the Florida Bank is under our law authorized to appoint such agent to perform the duties provided in the contract. Section 2709 of the General Statutes, provides that "The usual business of each banking company shall be transacted at an office or banking house located in the place specified in the charter." The contract is one of employment of the Trust Company, for a period of five years, to faithfully endeavor to negotiate loans, and borrow money, for the Florida Bank. Is negotiating loans and borrowing money a part of the usual business of a banking company? If so then it should under the provisions of the said Section 2709 of the General Statutes be transacted at the office of the bank in Florida and not by a corporation located in another State. Section 2707 of the General Statutes specifically enumerates as part of the business of a bank "discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, and by loaning money." Construing the said Sections 2707 and 2709 together, my opinion is that the law contemplates that negotiating loans and borrowing money is part of the usual business of a banking company and should be transacted at the office or banking house located in the place named in the charter, that is, at the Florida headquarters of the bank and that the law does not authorize

the employment of the Bankers Trust Company, a corporation of Fulton County, Georgia, at a stated annual salary, for a period of five years, "to faithfully endeavor to negotiate loans and borrow money" for the Florida bank, with authority to designate and appoint banks as depositories and reserve agents for the said Florida bank. Our law contemplates that the regular and usual business of the bank shall be managed and carried on at its place of business by the Directors and other officers of the bank and the necessary employees. An annual employment, for a period of five years, of a corporation of another State to negotiate loans and borrow money, with authority to designate and appoint banks and depositories and reserve agents, is an arrangement under which a part of the regular banking business, is authorized to be carried on away from the headquarters of the bank and in my opinion is unauthorized by the Florida laws.

As to the Depositors Guarantee Fund, the Articles of Agreement of this association in *Article X* and elsewhere plainly state that the fund is created for the specific purpose of meeting the liability of the stockholders and that no sums can be paid thereunder, except when the stockholders are relieved of their liability to the amount so paid. Also see the preamble and *Article XI*. The fees for such insurance is under the provisions of *Article VII* to be paid by the bank. Taking the expressed language of the Articles of Agreement, we find then, that the bank becomes a member of the association and pays the necessary fees for the purpose primarily of protecting the stockholders.

Upon an examination of our statutes, I find no law which in my opinion authorizes the use of the funds of a bank for the payment of the fees required of banks that become members of the Depositor's Guarantee Fund Association. To so authorize would permit the use of the funds of the bank, for the purpose of providing pri-

marily for the protection of the stockholders against liability fixed upon them by law.

In arriving at the conclusions and the opinion above set forth I have been governed by the general principle of law, that a corporation is an artificial being, that it gets its existence and authority from the State and that it has only such powers as are granted to it by law and that are incidental to an exercise of said powers.

Our Supreme Court in *McQuaig vs. Gulf Naval Stores Co.*, 56 Fla., p. 505, held that, "a corporate entity has only such rights and powers as are conferred upon it by express or implied provisions of law."

In this opinion I have confined myself strictly to the *expressed terms* of the contract with the Financial Agent, and the Articles of Agreement of the Depositor's Guarantee Fund Association, as the legal questions are confined to these two instruments, regardless of the question of a policy or the mode and manner governing the transactions between the banks and the said Financial Agent, and the Depositor's Guarantee Fund Association.

The delay in furnishing you this opinion, has as you are aware, been caused on account of me, in compliance with their request, allowing time to the representatives of the Witham System and other bankers connected therewith to be heard.

Respectfully submitted,

WITNESSES—MILEAGE FROM POINTS OUT OF THE STATE.

Tallahassee, Fla., August 3, 1912.

Hon. W. V. Knott,
Comptroller,
Tallahassee, Florida.

Dear Sir:

I am in receipt of your letter of the 3rd inst., asking

me to advise you whether or not a witness, residing outside of the State who is subpoenaed to appear before the grand jury at the court house of a county in this State, can be paid mileage by the State for the number of miles traveled from his home to the State line out of money furnished by the State to the Clerk of the Circuit Court under Sections 1591 and 1592 of the General Statutes of Florida.

In reply I beg to advise that mileage for witnesses residing out of the State can not be paid from this fund by the State for mileage. This was held in an opinion of the Attorney General addressed to the Comptroller June 12th, 1908, page 159, Attorney General's Report for 1907 and 1908. My impression is that the counties usually arrange to pay the actual expenses of witnesses for mileage traveled out of the State.

Respectfully submitted,

AUTHORITY OF BOARD OF CONTROL TO ACCEPT
CONDITIONAL GIFT FROM PEABODY BOARD.

Tallahassee, Fla., August 22, 1912.

Hon. P. K. Yonge,
Chairman, Board of Control,
Pensacola, Florida.

Dear Sir:—

Answering your inquiry relative to the authority of the Board of Control in making the agreement with the Peabody Board in connection with the gift of \$40,000 which the said Peabody Board has heretofore agreed to make for the purpose of the erection of a building at the University of Florida I beg to advise that the Board of Control while it is a body corporate, is in fact the Trustees of the said

university and is clothed with all the powers ordinarily exercised by a Board of Trustees. The agreement made by the Board of Control and approved by the State Board of Education wherein it agrees to appropriate and contribute for the perpetual maintenance of the School of Education in the said University of Florida a certain annual sum of money upon the donation of the said Peabody Board of the said sum of \$40,000 is in my opinion binding upon the said Board of Control, subject only to the Legislature from time to time making the necessary appropriation to pay said annual sums. An appropriation by the Legislature being necessary in view of the fact that the Board of Control cannot have at its disposal any fund except those appropriated by the Legislature. Your Board having the supervision and management of the University under its control I see no reason for any apprehension as to the Legislature making the necessary appropriation for carrying out the agreement relative to this donation. It is customary in this State as in others for the Legislature to recognize such obligation made by its officers in charge of a State Institution and I think this matter would unquestionably be taken care of by the Legislature.

Respectfully submitted,

UNITED STATES ARMY OFFICER—AS MEMBER
OF EXAMINING BOARD OF NATIONAL
GUARDS.

Tallahassee, Fla., November 22, 1912.

Hon. J. Clifford R. Foster,
Adjutant General,
St. Augustine, Florida.

Dear Sir:—

Answering your inquiry asking for my opinion as to the authority of the Commander-in-Chief of the National Guard of Florida, to appoint Lieutenant H. Clay M. Supplee of the United States Army, who is detailed as Inspector-Instructor of the Organized Militia of Florida, as a member of the Examining Board provided by Section 682 of the General Statutes of Florida, as amended by Chapter 5930 of the Laws of Florida, I beg to advise that in construing the provisions of said Section 682, it being a part of the law governing and regulating the State Militia, it is my opinion that the Legislature when referring to "officers," referred to officers of the National Guard of Florida, and could not have had in mind United States Army officers.

It is, therefore, my opinion that the Examining Board should be composed of officers of the National Guard of Florida, and that a United States Army officer is not eligible to appointment on said Board.

Respectfully submitted,

PAYMENT OF W. T. BAUSKETT—COMPLETING
CATALOGUE HISTORICAL RECORDS.

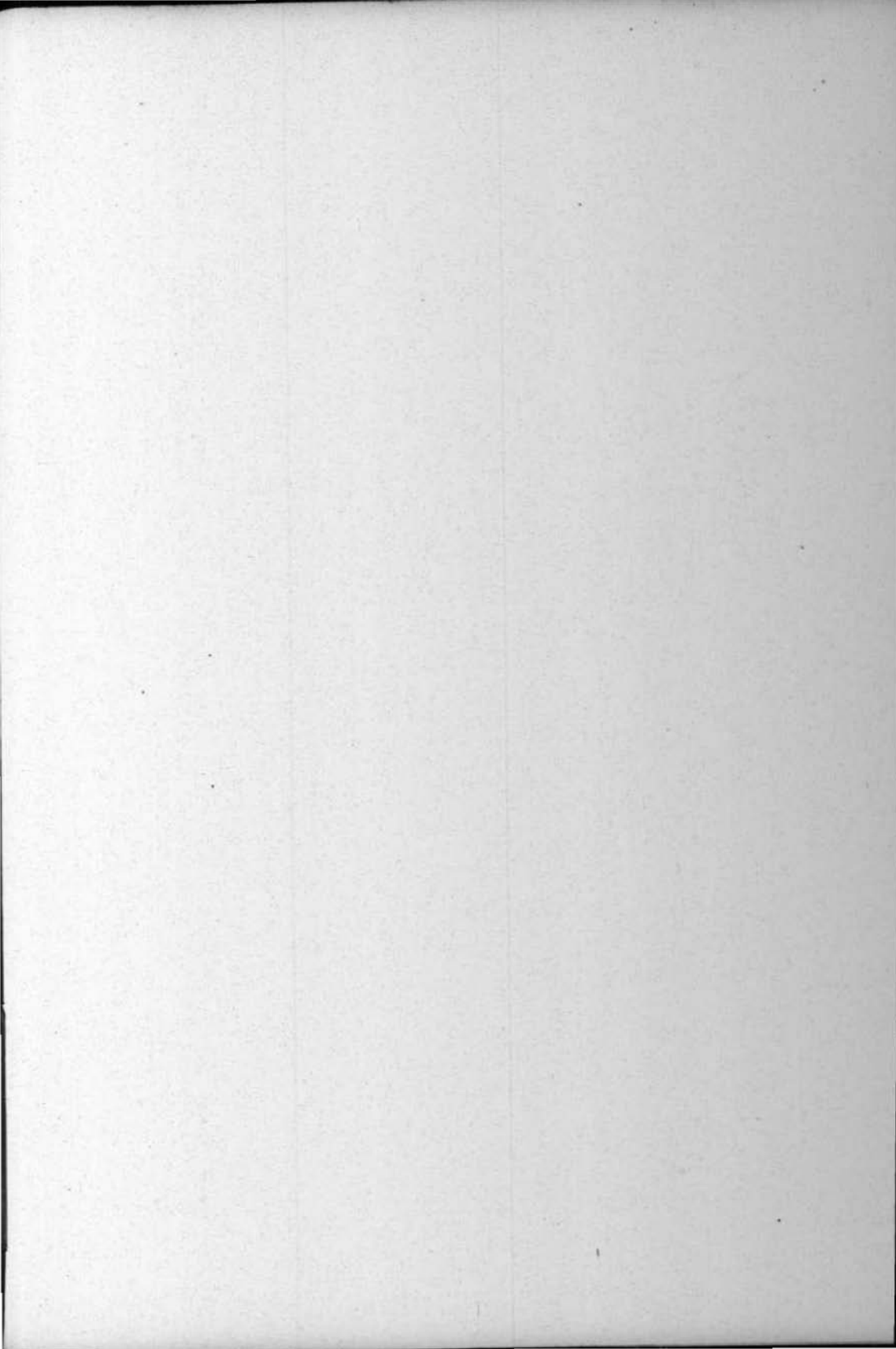
Tallahassee, Fla., December 21, 1912.

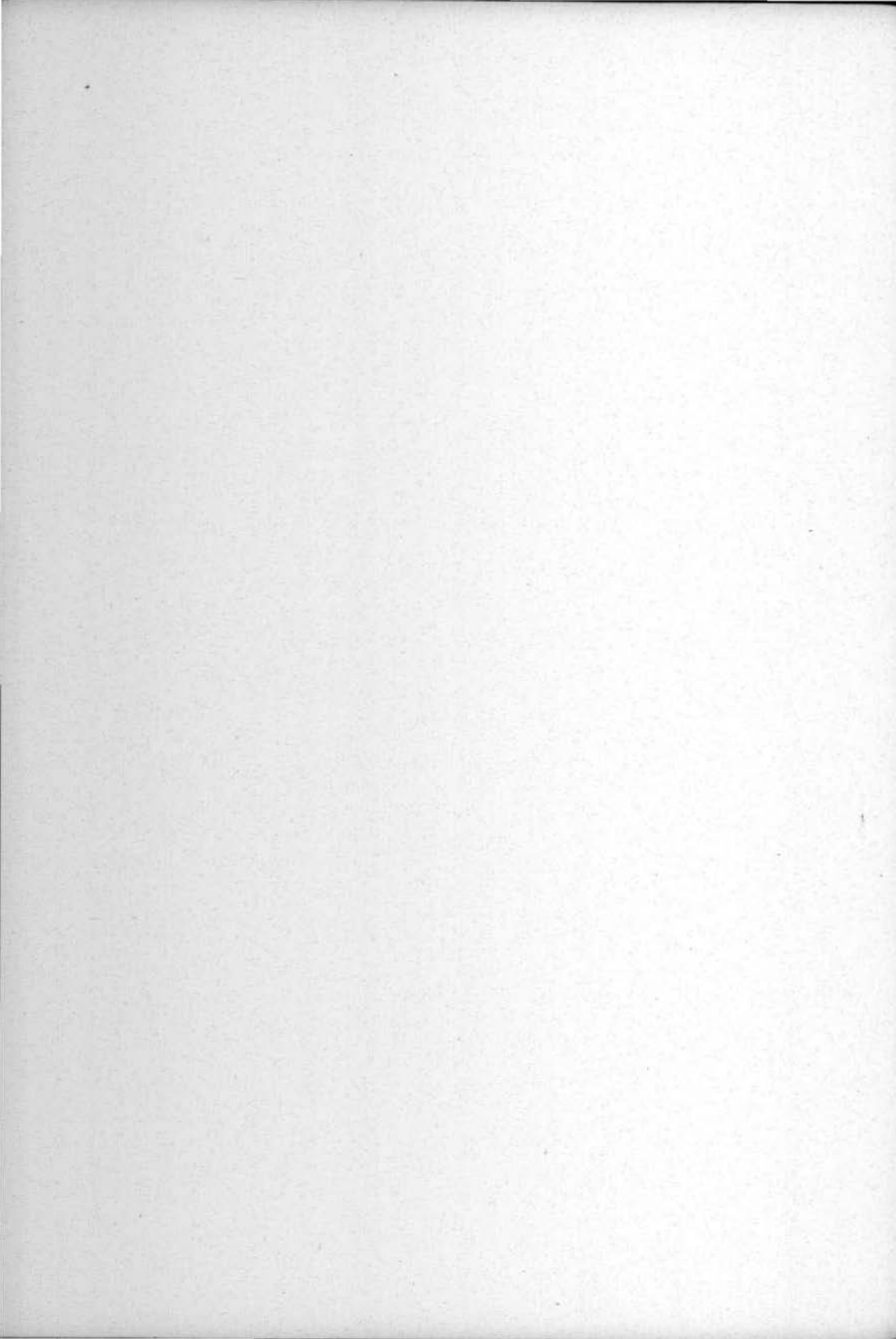
Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

Replying to your communication of the 20th, inst., wherein you submit the letter of Mr. W. T. Bauskett, who was appointed by you under the provisions of Chapter 6136 Laws of Florida, to perform the work therein contemplated and asking my opinion as to whether or not Mr. Bauskett is entitled to a warrant for the balance of the \$6,000.00, appropriated by the said act, I beg to advise that, in my opinion it was the intention of the Legislature to appropriate so much of the said sum as necessary to carry out the purpose of the act and not to fix said sum of \$6,000.00, as the stipulated sum to be paid for the said work. It is my opinion that Mr. Bauskett, should be paid such sum for said work as agreed upon when you appointed him or such sum as you may now agree upon not exceeding the amount appropriated.

Respectfully submitted.





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